INDEX

TO THE

PROCEEDINGS OF THE SENATE

SITTING FOR THE

TRIAL OF WILLIAM W. BELKNAP,

LATE SECRETARY OF WAR,

ON THE

ARTICLES OF IMPEACHMENT EXHIBITED BY THE HOUSE OF REPRESENTATIVES.

A.

Page.

Acceptance of the resignation of W. W. Belknap as Secretary of War by the President of the United States, and a note fixing the time thereof 247
Acquittal, judgment of, the presiding officer directs the Secretary to enter a 357
Adams Express Company, books of, showing the sending of money at different times by C. P. Marsh, of New York, to W. W. Belknap at Washington 182, 183
Adams, George M., Clerk of the House of Representatives—
  messages from the House presented by 1, 7
  testified as a witness for the prosecution 181
Adams, Green, Chief Clerk of the House of Representatives, message from the House presented by 1
Agreement, articles of, between John S. Evans and Caleb P. Marsh 181
ALCORN, JAMES L., a Senator from Mississippi—
  oath, the, administered to, by the presiding officer 72
  excused, on motion of Mr. Sherman, upon voting upon the question before the Senate, sitting as a court of impeachment, as he had been unavoidably absent 73
ALLISON, WILLIAM B., a Senator from Iowa—
  oath, the, administered to, by the Chief Justice 5
  incidental remarks by 171, 341
  motion by—
    that the consultations and opinions expressed in secret session be taken down by the reporters and printed in confidence for the use of Senators 73
    that the Senate consider the resolution submitted by him providing for the reporting in confidence of the proceedings had and opinions expressed, in secret session. Rejected 73
    that the court take a recess 73, 74
    that the order fixing the 6th of July for the trial be amended by making it the 19th of November 173
    that the question on Mr. Edmunds's motion concerning the final vote be divided 342
  opinion of, on the question whether the respondent is liable to be impeached by the House of Representatives and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment 116–122
  testimony by, for the defense 267
  votes by, on the articles of impeachment 343, 346, 349, 352, 355
ANTHONY, HENRY B., a Senator from Rhode Island—
  oath, the, administered to, by the Chief Justice 4
  incidental remarks by 19, 21, 37, 165, 242, 286, 287, 299, 313, 341
  interlocutory remarks by, on the evidence 229, 235, 238, 252
  motion by—
    that the court adjourn 15
    that the court retire for deliberation 18, 166
    that an order of Mr. Edmunds, fixing the time for hearing the arguments, be amended by making it May 15. Rejected 19

Page.

ANTHONY, HENRY B.—motion by—*Continued.*
    that an order of Mr. Sargent, fixing the time for hearing the evidence, be amended by making it July 11. Amended .. 166
    that an order of postponement be laid on the table. Agreed to 287
  question by, to the counsel for the respondent, concerning the examination of their witnesses 252
  votes by, on the articles of impeachment 343, 346, 349, 352, 355
Appeal from the decision of the Chair, that Senators have not the right to address interrogatories to the managers or to the counsel for the respondent. By Mr. Edmunds. The decision was not sustained by the Senate 258, 259
Applause in the galleries, checked by the presiding officer 13, 69, 343
Articles of agreement between Evans and Marsh for trading at Fort Sill, Indian Territory 301
Articles of impeachment, the—
  read before the court by Mr. Manager Lord 1, 3
  by the Secretary of the Senate 343, 345, 349, 351, 354
  votes on the, by the Senators 343–357
Augur, Christopher C., Major-General, a witness for the defense—
  evidence concerning the official character of W. W. Belknap and his reputation at Keokuk, Iowa 265
  cross-examined by the counsel for the prosecution 265, 266
Authorities, citations of—
  Abbott's Digest, Law of Corporation, page 595, section 13 336
  Able *vs.* Bloomfield, 6 Texas, page 263 332
  Adams, John, Works of, volume 10, page 236 149
  Adams, John, Works of, volume 6, page 408 151
  Adams, John Quincy, Congressional Globe, April 13, 1846 363
  American Law Register, new series, volume 6, page 257 ..... 49, 92
  Angell and Ames on Corporations, page 98 336
  Annals of Congress, Fifth Congress, volume 2, page 2253 ..... 65, 130
  Annals of Congress, Fifth Congress, volume 2, Wharton's State Trials, pages 2318, 3319 ..... 103, 104
  Archbold's Criminal Practice and Pleadings, volume 1, page 110. 33
  Archbold's Criminal Practice and Pleadings, sixth edition, volume 2, page 206 33
  Ashford *vs.* Thornton, Barnwell & Adderson, pages 405, 923 ... 36
  Bacon's Abridgment, Verdict, D, A, ... 9
  Barber's Criminal Law, page 343 33
  Barnard, George G., Report of the trial of, volume 1, pages 151, 158, 173, 192 ..... 29, 31, 41, 60
  Bell *vs.* Railroad, 4 Smedes & Marshall, page 549 332
  Bishop on Criminal Procedure, volume 1, page 324 34
  Blackstone's Commentaries, volume 4, pages 139, 257, 259, 260 .. 28 88, 117, 332
  Blackstone's Commentaries, book 4, chapter 31, pages 395, 395 .. 52
  Blount, William, impeachment trial of, Annals of Congress, Fifth Congress, volume 2, pages 2248, 2251, 2261, 2263, 2278, 2294, 2316, 2318 ..... 25, 28, 34, 42, 55, 363, 364
  Blount, William, replication and plea to the jurisdiction, in case of 24
  Bluett *vs.* Nicholson, 1 Branch, page 384 332

Page.

Authorities, citations of—*Continued.*
Blydenburgh *vs.* Cotheal, 4 Comstock's New York Reports, page 418 ... 35
Bouvier's Law Dictionary, volume 1, page 715, title "Inquest" ... 36
Bouvier's Law Dictionary, title "Conviction," twelfth edition ... 296
Bouvier's Law Dictionary, volume 2, page 540 ... 9
Briggs *vs.* French, 2 Sumner, page 252 ... 31
Broom's Legal Maxims, page 122 ... 44
Brown *vs.* Keene, 8 Peters, page 112 ... 45
Bullythorp *vs.* Turner, Willes's Reports, page 478 ... 330
Bureau County *vs.* Thompson, 39 Illinois, page 566 ... 332
Burke's Works, pages 280, 281 ... 57
Burke's Works, volume 7, pages 490, 497, 501 ... 33
Burke's Report on the trial of Warren Hastings ... 22
Cabinet Lawyer, The, pages 62, 63 ... 296
Chapman *vs.* Morgan, 2 Green, (Iowa,) page 374 ... 332
Chase's Trial, volume 2, page 383 ... 362
Clapp *vs.* Ely, 3 Dutcher's Reports, page 622 ... 298
Clifford *vs.* Cony, 1 Massachusetts, page 500 ... 331
Clute *vs.* Clute, 3 Denio, page 263 ... 35
Coke's Institutes, volume 3, page 145 ... 322
Common Bench Reports, volume 12, page 55 ... 44
Commonwealth *vs.* Hampton, 3 Grattan, page 590 ... 331
Comyn's Digest, title "Judicature of Parliament," page 31 ... 104
Comyn's Digest, title "Parliament" ... 88
Congressional Globe, April 13, 1846 ... 59
Constitution of the United States, The. 29, 34, 38, 39, 40, 41, 42, 46, 48, 50, 51, 52, 53, 58, 65, 66, 67, 76, 77, 78, 79, 80, 81, 82, 84, 85, 86, 87, 88, 89, 91, 92, 93, 94, 95, 96, 98, 102, 103, 104, 105, 107, 108, 109, 110, 111, 112, 114, 115, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 129, 132, 135, 138, 139, 141, 142, 143, 144, 145, 146, 147, 148, 150, 153, 154, 155, 156, 332, 335, 343, 358, 359, 360, 361, 362, 364
Cooley on Constitutional Limitations, page 160, note 3 ... 42
Cotton *vs.* Davis, 1 Strange, page 53 ... 335
Crawford *vs.* Slade, 9 Alabama, page 887 ... 331
Cummings *vs.* The State of Missouri, 4 Wallace, page 323 ... 64, 83
Curtis's Constitution, volume 2, pages 86, 87 ... 38
Curtis's History of the Constitution, page 360 ... 40, 141
Cushing's Law and Practice of Legislative Assemblies, sections 2535, 2548 ... 26
Cushing's Law and Practice of Legislative Assemblies, page 167 ... 296
Damp *vs.* Daue, 29 Mississippi, page 419 ... 332
Davies *vs.* Penton, 6 Barnewall and Creswell, page 222 ... 330
Dean *vs.* Boyd, 9 Dana, Kentucky, page 169 ... 331
Dearborn *vs.* Kent, 14 Wendall, page 187 ... 331
De Hart's Military Law, page 35 ... 83
Delaware, constitution of, (September 20, 1776,) article 23, page 213 ... 90, 363
Dicks *vs.* Hatch, 20 Iowa, page 380 ... 332
Dodson *vs.* Scraggs, 47 Missouri, page 285 ... 332
Dred Scott case, The, 19 Howard, pages 393, 473, 564 ... 287, 332
Durant *vs.* The Essex Company, 7 Wallace, page 113 ... 296
Edward VI, volumes 5 and 6, chapter 16 ... 88
Edwards *vs.* Reginam, 9 Exchequer, pages 631, 632 ... 35
Elliot's Debates, volume 2, pages 379, 477 ... 90, 150
Elliot's Debates, volume 3, pages 145, 270, 316, 447, 516 ... 90, 92, 150, 363
Elliot's Debates, volume 4, pages 35, 265, 281 ... 69, 90, 150
Ellis *vs.* Ellis, 4 Rhode Island, page 122 ... 331
Executor, &c., *vs.* Elmendorf, 10 Johnson, page 49 ... 330
Ex parte Garland, 4 Wallace, page 388 ... 84
Ex parte Williams, 4 Yerger, page 579 ... 332
Faw *vs.* Marsteller, 2 Cranch, page 10 ... 79, 90
Field *vs.* Walker, 23 Alabama, page 155 ... 332
Garbett's Criminal Law, volume 2, page 521 ... 33
Garrett *vs.* Trotter, 65 Missouri, page 430 ... 332
Gates *vs.* Delaware County, 12 Iowa, page 405 ... 62
George I, volume 8, chapter 24, section 8 ... 88
Georgia, constitution of, article 11, section 4 ... 29
Ginn *vs.* Rogers, 4 Gilman, page 131 ... 332
Godson *vs.* Good, 6 Taunton, page 587 ... 330
Goodrich's British Eloquence, page 659 ... 9
Gould's Pleadings, chapter 3, section 170, page 142 ... 32
Grant on Corporations, page 54 ... 336
Grant *vs.* Tams, 7 Monroe, page 218 ... 332
Green *vs.* Collins, 6 Iredell, page 139 ... 332
Hale's Jurisdiction House of Lords, page 174 ... 320
Hallam's Constitutional History, volume 1, pages 372, 373, 401 ... 56, 79, 149
Hallett *vs.* Slidell, 11 Johnson's Reports, page 55 ... 32
Hamilton, Alexander, The Federalist, No. 65, pages 300, 301 ... 35
Hamilton, Alexander, The Federalist, Nos. 65 and 66 ... 40, 128, 362
Hansard's Parliamentary History, volume 4, page 1263 ... 100
Harding *vs.* Stokes, 2 Meeson & Welsby, page 233 ... 365
Hastings, Warren, impeachment trial of, Commons Journal, volume 44, page 320 ... 26
Hastrop *vs.* Hastings, 1 Salkeld, page 213 ... 330
Hatsell's Precedents, volume 4, pages 120, 645 ... 117, 362
Hawkins's Pleas of the Crown, page 67 ... 322
Henslow *vs.* Fawcett, 3 Adolphus & Ellis, page 51 ... 365

Page.

Authorities, citations of—*Continued.*
Hodgson *vs.* Bowerbank, 5 Cranch, page 303 ... 45
Holy Bible, The, Deuteronomy, xvi, 19 ... 307
Holy Bible, The, Exodus, xxxii, 7–14 ... 320
Hunter *vs.* Belgen, 39 Illinois, page 367 ... 331
Hurd *vs.* Toombs, 7 Howard, Mississippi, page 229 ... 332
Institutes, volume 4, pages 53, 54 ... 104
Jackson *vs.* Ashton, 8 Peters, page 148 ... 45, 332
Jackson *vs.* Bull, 1 Johnson, page 90 ... 36
Jackson *vs.* McCall, 3 Cowen, page 80 ... 36
Jackson *vs.* Twentyman, 2 Peters, page 136 ... 45
Jacobs's Law Dictionary, title "Impeachment" ... 88
Jefferson's Manual, pages 284, 287 ... 78, 140
Jefferson, Thomas, letters of, February 8, 1798 ... 157
Jeffries *vs.* Harbin, 20 Alabama, page 387 ... 332
Jenkins *vs.* Peporn, 2 Johnson's Cases, page 313 ... 330
Johnson, Andrew, impeachment trial of, congressional edition—
volume 1, pages 77, 123, 124, 126, 134, 140 ... 41
volume 2, pages 67, 89 ... 41
volume 3, pages 68, 89, 156, 249, 270 ... 41
Jones *vs.* Lee, 18 Howard, page 76 ... 31
Jones *vs.* Porter, 6 Howard's New York Reports, page 286 ... 35
Kennet's History of England, volume 3, pages 386, 387 ... 100
Kent's Commentaries, volume 1, pages 156, 288, 289, 302 ... 85, 142, 156
Kentucky *vs.* Denison, 24 Howard, page 66 ... 363
Ketland *vs.* Cassins, 2 Dallas, page 305 ... 332
King *vs.* Payne, 2 Chitty, King's Bench, page 367 ... 35
King *vs.* Warlow, 2 Maule and Selwyn, page 75 ... 35
Knott *vs.* Clements, 13 Arkansas, page 335 ... 331
Knowles *vs.* Gas Light Company, 19 Wallace, page 58 ... 333
Leigh *vs.* Mason, 1 Scammon, page 249 ... 332
Lessee of Hickey *vs.* Stewart, 3 Howard, page 750 ... 333
Lewis *vs.* Oliver, 4 Abbott's Practice, page 121 ... 62
Lex Parliamentaria, page 298 ... 297
Lingard's History of England, volume 3, page 201 ... 320
Long *vs.* Long, 1 Morris, page 381 ... 332
McCool *vs.* Smith, 1 Black, page 459 ... 88
McCrary on American Law of Elections, page 260 ... 62
McDonald *vs.* Smalley, 1 Peters, pages 120, 320 ... 31, 44
McDonald's Manual, page 284 ... 117
Madison, James, letter of, March 4, 1798 ... 142
Madison Papers, volume 2, pages 85, 1153, 1159 ... 53, 118, 140, 363
Madison Papers, volume 3, page 1528 ... 53, 107
Madison's Report, page 507 ... 139
Maissonaire *vs.* Kealing, 2 Gallison, 245 ... 332
Martin, Luther, language of, in defense of Judge Chase, Annals of Congress for 1805, page 431 ... 29
Massachusetts, constitution of, (March 2, 1780,) chapter 1, section 2, article 8 ... 90
May's Law of Parliament, pages 217, 337, 343 ... 336
May's Parliamentary Practice, chapter 23 ... 79
Moran *vs.* Masterson, 11 B. Monroe, page 17 ... 332
Mossman *vs.* Higginson, 4 Dallas, page 12 ... 45
Murray's Lessee *et al. vs.* Hoboken Land and Improvement Company, 18 Howard, page 280 ... 128
New Jersey, constitution of, (July 2, 1776,) article 12 ... 90
New York, constitution of, (April 20, 1777,) articles 32, 33 ... 90
North Carolina, constitution of, (December 18, 1776,) article 23 ... 90
Ogden *vs.* Saunders, 12 Wheaton's Reports, page 267 ... 361
People *vs.* Allen, 5 Davis, page 79 ... 331
People *vs.* Porter, 6 California, page 26 ... 62
People of the State of New York *vs.* George G. Barnard, volume 1, pages 106, 108 ... 9, 17
Pennsylvania, constitution of, (July 15, 1776,) article 22 ... 90
Portchester, Lord, *vs.* Petrie, 3 Douglas, page 273 ... 35
Prescott's Trial, pages 160, 180 ... 150
Prescott's Trial, appendix to, page 216 ... 148
Price *vs.* Railroad Company, 18 Indiana, 139 ... 331
Queen, The, *vs.* The Inhabitants of St. Mary, 1 Ellis and Blackburn, pages 816, 827 ... 35
Rawle on the Constitution, pages 198, 200, 203, 205, 210, 213, 243, 273 ... 32, 35, 42, 53, 60, 109, 150, 153, 154, 361, 362
Reg. *vs.* Bailiffs, &c., of Ipswich, 2 Lord Raymond, page 1232 ... 336
Rex *vs.* Shakespeare, 10 East, pages 83, 87 ... 330
Revised Statutes, sections 1781, 5408, 5444, 5451, 5490, 5491, 5500, 5501, 5502, 5503, 5504 ... 51, 79, 86, 87, 120, 148, 179, 307, 332, 362, 364, 365
Rhode Island *vs.* Massachusetts, 12 Peters, pages 657, 718 ... 287, 331, 333, 363
Rushworth, volume 1, article 3, pages 250, 251, 252, 262 ... 104
Russell on Crimes, volume 1, page 154 ... 322
Ryan *vs.* May, 14 Illinois, 49 ... 331
Schrivner's Lessee *vs.* Lynn, 2 Howard, page 99 ... 333
Scott on Military Law, sections 630, 1070, 1071, 1072 ... 51, 52
Sedgwick on Statutes, pages 262, 426 ... 361
Selden's Judicature of Parliament, pages 38, 84, 168, 171, 1263 ... 78, 84, 117
Senate Rules on Impeachment, Nos. 6, 16, 20, 22, 23, 38, 44 ... 335, 336
Shaw *vs.* Dutcher, 19 Wendell, pages 222, 223 ... 330

Page.

Authorities, citations of—*Continued.*
Shook *vs.* Fulton, 4 Cowen's Reports, page 424 32
Shower's Reports, volume 1, page 91 330
Sidney on Appeals, 25 Wendell's Reports, page 255 297
Small *vs.* McChesney, 3 Cowen, page 19 35
Smith *vs.* Carnochan, 7 Howard, page 198 ..... 31, 44
Smith *vs.* Dubuque, 1 Clark, page 492 332
South Carolina, constitution of, (March 19, 1778,) article 23 ... 90
Starkie's Law of Libel, pages 203, 580 9
Starbuck *vs.* Murray, 5 Wendell, page 48 333
State *vs.* Bonney, 34 Maine, page 223 332
State *vs.* Cardline, 20 Alabama, page 19 332
State Trials, volume 29, pages 762, 44, 46, George III 20
Stearly's Appeal, 3 Grant, Pennsylvania, page 270 332
Stephen's Pleading, page 144 330
Story's Commentaries on the Constitution, volume 1, sections 79, 419, 448, 686, 687, 741, 784, 788, 789, 790, 791, 796, 801, 802, 803, 805, 808, 811, 1344 ..... 30, 33, 40, 42, 46, 49, 83, 84, 111, 117, 122, 123, 126, 127, 155, 296, 361
Story's Reports, volume 2, page 571 44
Stoughton *vs.* Mott, 13 Vermont, page 175 332
Supreme Court of the United States, decision of, 7 Peters, page 150 92
Sutsten *vs.* Norton, 3 Burrows, page 1235 365
Taney's Decisions, page 246 363
Thomas *vs.* Lord, 1 Lord Raymond, pages 356, 357 330
Tomlin's Law Dictionary, title "Impeachment" 35
Tucker's appendix to first volume of Blackstone, pages 428, 429 362
United States *vs.* Arredondo, 6 Peters, page 709 331
United States *vs.* Bedford Bridge, 1 Woodbury & Minot, pages 401, 405 332
United States *vs.* Burr, 7 Cranch, page 32 29
United States *vs.* Hudson and Goodwin, 1 Kent, page 331 29
United States *vs.* Wilson, 7 Peters, page 150 ..... 88, 128
United States *vs.* Worrall, 2 Dallas, page 384 29
United States *vs.* Wright, McLean's Reports, volume 1, page 512 ..... 62, 67, 154
Vermont, constitution of 1793, part 2, section 24 29
Viner's Abridgment, volume 1, title "Relation," pages 289–293 .. 36
Virginia, constitution of, (July 5, 1776,) pages 287, 288, American Constitutions 90, 363
Voorhies *vs.* Bank, 10 Peters, page 474 ..... 331, 333
Wanzer *vs.* Howland, 10 Wisconsin, page 8 332
Washburn's Judicial History of Massachusetts, page 145 319
Wharton's Criminal Law, page 365 331
Wharton's State Trials, page 200 107
Wilcox *vs.* Jackson, 13 Peters, page 499 333
William III, volumes 12 and 13, chapter 2 107
Williamson *vs.* Berry, 8 Howard, page 498 333
Winn *vs.* Freel, 19 Alabama, page 171 332
Wooddeson's lecture on impeachment, volume 2, pages 596, 601 ..... 22, 60
Wooddeson's lecture on impeachment, law-library edition, pages 335, 369-370 28
Wright *vs.* Mills, 4 Hurlstone and Norman, 490–493, 494 ..... 35, 36
Ayes and noes on the roll-calls of the court. [See yeas and nays.]

B.

Banfield, E. C., Solicitor of the Treasury, letter from, concerning the introduction of spirituous liquors into the Indian Territory at Fort Sill 205
Barnard, William H., a witness for the prosecution, concerning certain deposits made by W. W. Belknap in the First National Bank of Washington 198, 199
Barnard, William T., a witness for the prosecution, evidence giving movements of W. W. Belknap in June, 1872, 1873, and 1874, and his having the charge of Belknap's private letters 217, 218
BARNUM, WILLIAM H., a Senator from Connecticut, oath, the, administered to, by the presiding officer 74
Bartlett, Edward T., a witness for the prosecution, evidence showing how he drew up the articles of agreement between J. S. Evans and C. P. Marsh 181
Bass, Lyman K., a Representative from New York, appointed a member of the impeachment committee of the House .. 1
BAYARD, THOMAS F., a Senator from Delaware—
oath, the, administered to, by the Chief Justice 4
incidental remarks by 169
interlocutory remarks by, on the evidence 248, 249, 252, 270
remarks by, on a question of adjournment, and of the rules of the Senate 5
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment 127–130

Page.

BAYARD, THOMAS F.—*Continued.*
motion by—
that the second resolution of Mr. Thurman be amended. Agreed to 76
that the third resolution of Mr. Thurman be amended. Agreed to 76
that the court adjourn 270
that as a condition-precedent to the order for postponement of his trial asked for on the 12th instant by the respondent, it is ordered that the respondent inform the Senate what in substance he proposes to prove by John S. Evans, the witness on the ground of whose absence postponement is asked 271
question by, to the managers: Is it the object of the present inquiry to corroborate or discredit the testimony of Marsh, the witness, or to establish any fact therein referred to, or solely to prove what was the action or conduct of Mr. Belknap when the fact that such charges had been made against him was so made known to him? 249
votes by, on the articles of impeachment 343, 346, 349, 352, 355
Belknap, William W., late Secretary of War—
appeared and filed his plea to the articles of impeachment 7
at the battle of Shiloh, allusion to, by Mr. Carpenter 13
commissions of, as Secretary of War 200
connection of, with the Fort Sill sutlership 177, 186
counsel for, [see Carpenter, M. H.; Black, J. S.; and Blair, M.]
Evans, J. S., affidavit concerning the testimony of 269
family of, pecuniary relations of .. 223, 240, 241, 250, 251, 290, 328, 339
impeachment of, in the name of the House of Representatives. 1
letter from, concerning J. S. Evans 206
letter to, from General Hazen 233
list of one hundred and ninety-seven witnesses presented by .. 170
motion by, that the managers furnish a list of their witnesses. 167
that the order of the Senate be vacated 162
that there can be no further legal proceedings 170
official character of, while Secretary of War 256, 257, 258, 261, 265, 267, 268, 269, 285
personal reputation of, at Keokuk, Iowa 266, 267
plea of, to the jurisdiction overruled by the court 158
real estate, investments in, at Maroa, Illinois 199
receipts of money by, from C. P. Marsh 182, 183, 184, 196, 197, 198, 199, 222
rejoinder submitted by, to the replication of the House 8
treatment of, remarks on the, by Mr. Black 12, 71
by Mr. Carpenter 14
verdict of acquittal on the articles of impeachment 357
Benét, S. V., Colonel, a witness for the defense—
evidence concerning official reputation of General Belknap. 267, 268
cross-examined by the counsel for the prosecution 268
re-examined by the counsel for the defense 268
recross-examined by the counsel for the prosecution 268
Black, Jeremiah S., counsel for the respondent—
appeared with the respondent in the Senate Chamber 6
incidental remarks by 163, 164, 167, 168, 169, 286, 294, 307, 313
interlocutory remarks by, on the evidence 182, 185, 187, 198, 226, 229, 232, 251, 261, 262, 269, 286
remarks by—
on the presentation of a paper containing a list of witnesses whose attendance is desired by the respondent. 170
on an affidavit setting forth the illness of Mr. Carpenter, which made a postponement desirable 298
argument by—
on the respondent's application for a postponement until December 12, 13
on the question whether the respondent is amenable to trial by impeachment for acts done as Secretary of War notwithstanding his resignation of that office 68, 72
on the motion that the court set aside its order asserting jurisdiction, for the reason that it was not passed with the concurrence of two-thirds of the Senators present .. 163, 164
on the motion that the managers furnish the respondent a list of the witnesses whom they intend to call 167
on presenting the answer of the respondent to the articles of impeachment 170
on the motion that the cause be continued until some convenient day in November 171
on the objection by the counsel for the respondent to all evidence to support the opening of the managers, on the ground that there can be no legal conviction, the Senate having already determined the material and necessary fact that the defendant is not, and was not when impeached, a civil officer of the United States 180
on the application for a continuance until the appearance of a desired witness 260
finally, reviewing evidence, law, and the facts of the case. 314–318
motion submitted by—
that the court set aside its order asserting jurisdiction for the reason that it was not passed with the concurrence of two-thirds of the Senators present 162

Page.

Black, Jeremiah S.—motion submitted by—*Continued.*
that this cause be now continued until some convenient day in November ... 171
that counsel for the accused object to the evidence now offered and to all evidence to support the opening of the managers, on the ground that there can be no legal conviction, the Senate having already determined the material and necessary fact that the defendant is not, and was not when impeached, a civil officer of the United States. Objection overruled ... 181
denial of statement made by, concerning Judge Hoar, by Mr. Lord, manager ... 357
denial of statement made by, concerning the late Vice-President Wilson, by Mr. Senator Boutwell ... 357
BLACKBURN, J. C. S., a Representative from Kentucky—
appointed a member of the impeachment committee of the House ... 1
Blair, Montgomery, counsel for the respondent—
appeared with the respondent in the Senate Chamber ... 6
argument by—
on respondent's application for a postponement until December ... 11
on the question of jurisdiction and the order of proceeding. 22
on the question whether the respondent is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of that office ... 28–37
on the motion submitted by the respondent that the court set aside its order asserting jurisdiction, for the reason that it was not passed with the concurrence of two-thirds of the Senators present ... 162, 163
on an application for a continuance until the appearance of a desired witness ... 260
on the question of jurisdiction and finally reviewing the case ... 287–294
remarks by—
on the time for pleading. ... 163, 164, 167, 170
on the order of the final arguments ... 285
interlocutory remarks by, on the evidence ... 182, 183, 190, 191, 205, 211, 215, 224, 232, 233, 234, 239, 246, 262, 263, 264, 265, 337, 340
examination by, of witnesses for the defense—
Augur, Christopher C., major-general ... 265
Crosby, H. T., chief clerk in the War Department ... 262, 263, 264
McLaughlin, Napoleon B., major ... 265
motion submitted by, that an order be made upon the managers on the part of the House of Representatives to furnish within twenty-four hours to the accused or his counsel a list of the witnesses whom they intend to call, together with the particulars of the facts which they expect to prove by them ... 167
Bliss, D. W., M. D., affidavits from—
stating the sickness of Mr. Carpenter, counsel for respondent. 298
of Mr. Manager Lapham ... 299
Blount, William, a Senator—
allusion to the trial of, by Mr. Hoar ... 20, 23, 24
allusion to the trial of, by Mr. Blair ... 28
BOGY, LEWIS V., a Senator from Missouri—
oath, the, administered to, by the Chief Justice ... 4
incidental remarks by ... 3, 4, 5, 187
remarks by, on an adjournment of the court to a specified time. 4, 5
call by, for the yeas and nays ... 5, 189
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment ... 143, 144
question by, to Mr. Manager McMahon, whether a pamphlet read from by him is an official document, containing testimony taken under oath ... 189
statement that he had been called home by the illness of his daughter, by his colleague, Mr. Cockrell ... 319
BOOTH, NEWTON, a Senator from California—
oath, the, administered to, by the Chief Justice ... 4
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment ... 144, 145
votes by, on the articles of impeachment ... 343, 347, 349, 352, 355
BOUTWELL, GEORGE W., a Senator from Massachusetts—
oath, the, administered to, by the Chief Justice ... 4
incidental remarks by ... 161
denial by, of a statement by counsel for the respondent reflecting on the memory of the late Vice-President Wilson ... 357
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment ... 130–133

Page.

BOUTWELL, GEORGE W.—*Continued.*
motion by, that the court first hear and determine the question of jurisdiction, and that four managers may be allowed to submit arguments thereupon. Agreed to ... 27
votes by, on the articles of impeachment ... 343, 347, 349, 352, 355
Bower, Mrs., testimony of C. P. Marsh, concerning ... 223, 240, 241, 250, 251, 260
Brinkerhoff, Henry S., a witness for the prosecution—
identification of a paper in the office of the Adjutant-General of the Army ... 243
cross-examination by the counsel for the respondent ... 243
BRUCE, BLANCHE K., a Senator from Mississippi—
oath, the, administered to, by the Chief Justice ... 4
votes by, on the articles of impeachment ... 343, 347, 349, 352, 355
BURNSIDE, AMBROSE E., a Senator from Rhode Island—
oath, the, administered to, by the Chief Justice ... 5
motions by—
that an order of Mr. Edmunds fixing the time for hearing the arguments be amended by making it May 16. Rejected ... 19
that an order of Mr. Edmunds excusing the managers and counsel from attendance be amended by adding that the court adjourn until May 15. Agreed to ... 72
that an order of Mr. Sherman fixing the time of adjournment of the court to May 15 be amended by making it May 16. Rejected ... 72
CAMERON, ANGUS, a Senator from Wisconsin—
oath, the, administered to, by the Chief Justice ... 4
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment ... 126, 127
votes by, on the articles of impeachment ... 343, 347, 349, 352, 355
CAMERON, SIMON, a Senator from Pennsylvania—
oath, the, administered to, by the Chief Justice ... 4
incidental remarks by ... 19
motions by—
that the court adjourn ... 19, 20, 21
that a motion of Mr. Anthony to amend a motion of Mr. Sargent be amended by substituting July 6 for July 11. Rejected ... 163
votes by, on the articles of impeachment ... 343, 347, 349, 352, 355
CAPERTON, ALLEN T., a Senator from West Virginia—
oath, the, administered to, by the Chief Justice ... 5
[Mr. Senator Caperton died July 26, 1876.]
Carpenter, Matt H., counsel for the respondent—
appeared with the respondent in the Senate Chamber ... 6
presented the plea of the respondent upon the articles of impeachment ... 6
incidental remarks by ... 6, 7, 25, 37, 161, 174, 175, 179, 299, 312, 313, 314, 357
remarks by—
on the time for filing the replications and the surreplications. 7, 8
on enlarging the time for argument under the twentieth rule, and asking an adjournment of the trial until the first Monday of December ... 10
on asking a postponement until May 15 ... 27
on an application for a postponement to secure the evidence of an absent witness without stating what that evidence is expected to be ... 259, 269, 271
interlocutory remarks by, on the evidence ... 181, 183, 184, 185, 187, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 264, 265, 266, 267, 268, 269, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286
examination by, of the witnesses for the defense—
Allison, William B., a Senator from Iowa ... 267
Benét, S. V., chief of ordnance ... 267, 268
Crosby, H. T., chief clerk in the War Department ... 264, 282, 283, 284, 285
Davis, Nelson H ... 258, 261
Dunn, William McKee, Judge-Advocate-General ... 268
Hancock, Winfield S., Major-General ... 285
Humphreys, Andrew A., Chief of Engineers ... 268
Kasson, John A., a Representative from Iowa ... 269
Lowe, Ralph P ... 266
Macfeeley, Robert, Commissary-General ... 257
Marcy, R. B., Inspector-General ... 268
Miller, Samuel F., Mr. Justice, of the Supreme Court ... 269
Pope, John, Major-General ... 256, 257
Ruger, Thomas W., Colonel ... 267
Townsend, E. D., Adjutant-General ... 257, 258, 278, 279
Wright, George G., a Senator from Iowa ... 267
cross-examination by, of the witnesses for the prosecution—
Brinkerhoff, Henry S ... 243

Page.

Carpenter, Matt H.—cross-examination by, of witnesses—*Cont'd.*
Clymer, Hiester, a Representative from Pennsylvania..254, 255
Emery, Charles F.....199, 200
Evans, John S.....276–278, 279, 280, 281, 282
Fisher, John J.....253
Hazen, William B., Major-General.....230, 231, 233, 234, 243–245
McDowell, Irwin, Major-General.....189–196
Marsh, Caleb P.....236, 237, 242, 243
Moody, William F.....215
Townsend, E. D., Adjutant-General.....209–214
Vilas, Charles N.....198
motions by—
asking a copy of the replications and time to frame surreplications.....7
closing the issues of fact on the question of jurisdiction.....10
asking a postponement until Monday, May 15.....27
asking a postponement until the arrival of John S. Evans, whose testimony is material and important for the defense.....269
asking for an order that the further trial of this cause be postponed until notice be given by the Senate to the House of Representatives of the United States and to the respondent.....271
argument by—
on the respondent's application for a postponement until December.....13
on the motion of the managers that the evidence bearing on the question of jurisdiction be given before the arguments shall be presented on that question, and the fixing the time for pleadings.....15
on the motion of Mr. Conkling that the Senate first hear and determine the question of jurisdiction.....17
on the question of jurisdiction and the order of proceeding.20, 25
on the question whether the respondent is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of that office.....37–47
on the order of the Senate that the respondent plead further or answer the articles of impeachment within ten days.....158, 159, 160, 161
on the objection of the counsel for the respondent to all evidence to support the opening of the managers, on the ground that there can be no legal conviction, the Senate having already determined the material and necessary fact that the defendant is not, and was not when impeached, a civil officer of the United States.....180, 181
on closing the defense for the respondent.....318–334
sickness of, affidavit of Dr. Bliss stating the.....298
Certificates of deposit in the National Bank of Commerce of New York, issued to C. P. Marsh and payable to W. W. Belknap.....196
Chair, ruling of the, that Senators have not the right to address interrogatories to the managers or to the counsel for the respondent. Appeal from the, by Mr. Edmunds. The decision was not sustained by the Senate.....258, 259
Chase, Mr. Chief Justice, suggestions of, concerning the forms of procedure.....5
Chief Clerk of the Senate, the—
journal of the court read by.....169, 171
papers and authorities read by.....19, 24, 25, 158, 162, 163, 164, 165, 166, 167, 168, 169, 170, 179, 181, 185, 186, 188, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 213, 219, 227, 234, 244, 253, 254, 265, 270, 271, 277, 282, 285, 286, 299
oaths administered to witnesses by.....179
CHRISTIANCY, ISAAC P., a Senator from Michigan—
oath, the, administered to, by the Chief Justice.....5
motion by—
that the second resolution of Mr. Thurman be amended by substituting: "Whereas the Constitution of the United States provides that no person shall be convicted on impeachment without the concurrence of two-thirds of the members present; and whereas more than one-third of all the members of the Senate have already pronounced their conviction that they have no right or power to adjudge or try a citizen holding no public office or trust when impeached by the House of Representatives; and whereas the respondent, W. W. Belknap, was not when impeached an officer, but a private citizen of the United States and of the State of Iowa; and whereas said Belknap has, since proceedings of impeachment were commenced against him, been indicted and now awaits trial before a judicial court for the same offenses charged in the articles of impeachment, which indictment is pursuant to a statute requiring in case of conviction (in addition to fine and imprisonment) an infliction of the utmost judgment which can follow impeachment in any case, namely, disqualification ever again to hold office: *Resolved*, That in view of the foregoing facts it is inexpedient to proceed further in the case." Withdrawn after debate..76

Page.

CHRISTIANCY, ISAAC P.—motion by—*Continued.*
that the motion of Mr. Morrill be amended by inserting: "That W. W. Belknap, the respondent, is not amenable to trial by impeachment for acts done as Secretary of War, he having resigned said office before impeachment".....76
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment.....100–106
question to Mr. Manager Lynde, what report he was reading from.....207
votes by, on the articles of impeachment.....343, 347, 349, 352, 355
CLAYTON, POWELL, a Senator from Arkansas, oath, the, administered to, by the Chief Justice.....4
Clymer, Hiester, a Representative from Pennsylvania—
appointed a member of the impeachment committee of the House.....1
impeachment of William W. Belknap by, in the name of the House.....1
testified as a witness for the prosecution.....245–251, 254, 255
on cross-examination by the defense.....254, 255
COCKRELL, FRANCIS M., a Senator from Missouri—
oath, the, administered to, by the Chief Justice.....5
incidental remarks by.....314
motion by, that the amendment of Mr. Edmunds to the amendment of Mr. Sargent be so amended as to fix the time for trial on June 19. Rejected.....167
questions by, to the presiding officer, whether anything had been heard from the absent witness Evans.....272
statement by, that his colleague, Mr. Bogy, had been called home.....319
votes by, on the articles of impeachment.....344, 347, 349, 352, 355
Commissions of W. W. Belknap, as Secretary of War, certified copies of.....200
Committee, the—
of the House of Representatives, on the Expenditures in the War Department—
letters from C. P. Marsh to.....253, 254
letters from W. W. Belknap to.....282
testimony before the.....250, 251
of the House of Representatives on the impeachment of W. W. Belknap.....1
of the Senate—
to consider the question of impeachment.....1
to wait on the Chief Justice.....3, 5
CONKLING, ROSCOE, a Senator from New York—
appointed on a select committee on the impeachment.....1
oath, the, administered to, by the Chief Justice.....5
call by, for the yeas and nays.....76, 173, 249, 319, 341
call of the Senate asked for by.....319
incidental remarks by.....17, 26, 37, 172, 288, 294, 295, 297, 298, 319
interlocutory remarks by, on the evidence.....188, 189, 193, 201, 219, 224, 227, 228, 232, 235, 237, 238, 242, 248, 249, 258, 259, 269, 272, 273, 276
remarks by—
on the delivery of the replications and the surreplications..7
concerning the witnesses for the prosecution.....174
motion by—
that the Senate first hear and determine the question of jurisdiction.....17
that an order of Mr. Edmunds fixing the time for hearing the arguments and the order in which they shall be made be amended. Agreed to.....19
that the court take a recess.....74
that an order of Mr. Morton be amended. Agreed to.....75
that the court adjourn.....77, 236
that the first resolution of Mr. Thurman be amended by inserting at the end thereof, "before he was impeached".....76
that the motion of Mr. Sherman be amended by adding that the impeachment can only proceed while Congress is in session.....173
that the Senate will receive any evidence, otherwise competent, which the counsel for the respondent assure the Senate will be connected with the case by the testimony of the witness Evans, now absent, but whom the respondent duly asked to have summoned and who is expected to appear.....261
that the managers proceed to examine the witness Evans in chief; or, should they decline to do so, the respondent may proceed to examine the witness in chief, with the right of the managers to cross-examine him like any other witness.....273
that the three managers and three counsel for the respondent may be heard in the concluding argument, in the order which they state to the Senate they have agreed upon. Agreed to.....286

Page.

CONKLING, ROSCOE—motion by—*Continued.*
that when called to vote whether the articles of impeachment or either of them are sustained, any Senator who votes in the negative shall be at liberty to state, if he chooses, that he rests his vote on the absence of guilt proved in fact, or on the want of jurisdiction, as the case may be; and the vote shall be entered in the journal accordingly. Amended 341
question by—
to Manager Hoar regarding a reference to Blount's case..... 23
to Mr. Carpenter, whether there is no distinction to try an impeachment between the case of a resignation before articles are found and the case of resignation not till after articles have been found..... 43
to the managers: 1. Whether if two persons guilty of crime in office cease to be officers at the same time, one by removal and the other by resignation, one is rather than the other subject to impeachment afterward? If a distinction between the two cases exists, please state it. 2. Is a private citizen liable to impeachment under the Constitution of the United States? If his having previously held an office distinguishes him in this respect from other citizens, please trace the distinction to the clause of the Constitution, or to the principle in which it is found..... 47
to Manager Jenks: The section of the Revised Statutes quoted provides that any "officer convicted of a violation of this section shall, moreover, be disqualified from holding any office of honor, profit, or trust under the Government of the United States." If the respondent be convicted on the indictment said to be pending under this section, can the judicial court pronounce the judgment required if in the mean time the Senate pronounces it; or should the court first pronounce judgment, what would be the weight of the fact in determining the province of the Senate?..... 55
to Mr. Blair, counsel for respondent, asking that a statement touching Mr. Carpenter's illness might be repeated... 164
to Mr. Manager Lynde, asking if an order given in evidence was the one alluded to by him..... 188
to Mr. Manager McMahon, concerning the testimony of General McDowell..... 194
to the counsel for the respondent, whether George T. Robinson, the writer of a letter, was connected with the case in any other way..... 212
to Adjutant-General Townsend, whether an indorsement was in the handwriting of the Secretary of War..... 214
to General Hazen, a witness for the prosecution, concerning certain letters.....230, 231
to the managers: Shall I understand the managers to propose either to read at large the testimony of Marsh or to have that testimony received here and go upon the record, all for the purpose of proving that after it was delivered the respondent resigned his office? Is that the scope of this proposal, or is it intended to put into the case what Marsh testified in another form on another occasion, that that testimony may speak in this trial?..... 246
to Mr. Manager Lynde, a series of questions, closing with: Suppose in place of a special direction of the Senate, by which the jurisdictional question was presented as a preliminary question, the trial had proceeded until now, that remaining then as it is now one of the elements in the case, would it or would it not, in the judgment of the manager and upon the law as he understands it, be the duty of any Senator to vote to maintain a jurisdiction which on his oath he believes does not and cannot exist?..... 297
to Mr. Manager Lord, two questions, the last one being: Then, if I may a step further understand the manager, the argument is that a Senator who votes whether an article is sustained or not simply votes upon the question whether in fact the person named did that act, and if he finds that he did his vote must be in the affirmative, or guilty, although he may believe on his oath, first that the act, if done, is not impeachable, and second that the person who did it is not himself the subject of impeachment.....336, 337
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment. [Not furnished for publication.]
point of order by..... 259
votes by, on the articles of impeachment.....344, 347, 349, 352, 355
CONOVER, SIMON B., a Senator from Florida—
oath, the, administered to, by the Chief Justice 5
votes by, on the articles of impeachment.....344, 347, 350, 352, 355

Page.

Consultations—
in the conference-chamber 14, 18, 27
with closed doors.....72, 73, 74, 75, 172, 341
COOPER, HENRY, a Senator from Tennessee—
oath, the, administered to, by the Chief Justice..... 4
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment.....133, 134
motion by, to adjourn..... 37
votes by, on the articles of impeachment.....344, 347, 350, 352, 355
CRAGIN, AARON H., a Senator from New Hampshire—
oath, the, administered to, by the Chief Justice 4
incidental remarks by..... 19
motion by, that the court adjourn 73
opinion of, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment.....154–158
votes by, on the articles of impeachment.....344, 347, 350, 352, 355
Crosby, H. T., a witness for the prosecution—
identifies express receipts for money sent by C. P. Marsh to W. W. Belknap.....183, 184
states that the private papers of W. W. Belknap were sent to him, including a letter from Marsh asking that the appointment as post-trader at Fort Sill be made out in the name of Marsh.....184, 185
identifies an article in the New York Tribune and an order issued in consequence.....185, 186, 187
questioned by Senator Sherman..... 186
recalled and examined by the counsel for the defense 262, 263, 264, 282, 283, 284, 285
recalled and cross-examined by the counsel for the prosecution. 263, 264, 283, 284, 285

D.

Danford, Lorenzo, a Representative from Ohio—
appointed a member of the impeachment committee of the House 1
DAVIS, HENRY G., a Senator from West Virginia—
oath, the, administered to, by the Chief Justice..... 4
incidental remarks by.....69, 260
motion by, that the court adjourn..... 73
votes by, on the articles of impeachment.....344, 347, 350, 353, 355
DAWES, HENRY L., a Senator from Massachusetts—
oath, the, administered to, by the Chief Justice..... 4
incidental remarks by.....20, 171
interlocutory remarks by, on the evidence..... 251
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment.....147–153
questions by—
to C. P. Marsh, a witness for the prosecution: State all the knowledge or information that General Belknap had, which it is in your power to state, as to the amount of any money sent him or the source whence it came other than what you have already stated.....238, 239
to C. P. Marsh, a witness for the prosecution: Did you or any other person to your knowledge ever explain to General Belknap what "Southwest" means in your letters informing him that you had a remittance for him? If so, state the explanation..... 240
votes by, on the articles of impeachment.....344, 347, 350, 353, 355
Davis, Nelson H., Inspector-General, a witness for the defense—
evidence concerning post-traderships, and the official character of W. W. Belknap as Secretary of War.....258, 261
Decision of the Chair, that Senators have not the right to address interrogatories to the managers or to the counsel for the respondent. Appeal from the, by Mr. Edmunds. The decision was not sustained by the Senate.....258, 259
Defense, the—
witnesses examined for—
Allison, William B., Senator, evidence concerning the reputation of W. W. Belknap in Iowa 267
Augur, Christopher C., Major-General—
evidence concerning the official character of W. W. Belknap, and his reputation at Keokuk, Iowa..... 265
cross-examined by the counsel for the prosecution.....265, 266
Benét, S. V., Colonel—
evidence concerning the official character of General Belknap 267, 268
cross-examined by the counsel for the prosecution..... 268
re-examined by the counsel for the defense 268
recross-examined by the counsel for the prosecution 268

Page.

Defense, the—*Continued.*
Crosby, H. T., a witness for the prosecution, recalled for the defense—
evidence concerning the appointment of post-traders..... 262, 263, 264, 282, 283, 284, 285
cross-examined by counsel for the prosecution..... 263, 264, 265, 283, 284, 285
Davis, Nelson H., Inspector General, evidence concerning post-traderships, and the official character of W. W. Belknap as Secretary of War.....258, 261
Dunn, William McKee, Colonel—
evidence concerning the official reputation of W. W. Belknap..... 268
cross-examined by the counsel for the prosecution.....268, 269
Hancock, Winfield S., Major-General, evidence concerning the official character of W. W. Belknap 285
Humphreys, Andrew A., Major-General, evidence concerning the official reputation of W. W. Belknap..... 268
Kasson, John A., Representative, evidence concerning the reputation of W. W. Belknap in Iowa 269
Lowe, Ralph P.—
evidence concerning the reputation of W. W. Belknap at Keokuk, Iowa 266
cross-examined by the counsel for the prosecution 266
re-examined by the counsel for the defense 266, 267
Macfeeley, Robert, Commissary-General—
evidence concerning sutlers and post-traders, and the official character of W. W. Belknap as Secretary of War. 257
cross-examined by the counsel for the prosecution 257
McLaughlin, Napoleon B., evidence concerning the appointment of J. S. Evans as post-trader 265
Marcy, R. B., Brigadier-General, evidence concerning the official reputation of W. W. Belknap 268
Miller, Samuel F., Mr. Justice, evidence concerning the official reputation of W. W. Belknap..... 269
Pope, John, Major-General, evidence concerning the post-tradership at Fort Sill, and the official character of W. W. Belknap as Secretary of War.....256, 257
Ruger, Thomas W., Colonel, evidence concerning the official reputation of W. W. Belknap 267
Sheridan, P. S., Lieutenant-General—
dispatch from, asking to be relieved from personal attendance, read, and admissions of what he would testify as to certain matters, placed on the record, subject to objection..... 219
part of a letter from, admitted as evidence..... 257
Townsend, E. D., Adjutant-General, a witness for the prosecution, recalled for the defense—
evidence concerning General Grierson's letter.....257, 258
cross-examined by counsel for the prosecution..... 258
recalled by counsel for the defense.....278, 279
Wright, George G., Senator—
evidence concerning reputation of W. W. Belknap in Iowa. 267
cross-examined by the counsel for the prosecution..... 267
DENNIS, GEORGE R., a Senator from Maryland—
oath, the, administered to, by the Chief Justice..... 5
votes by, on the articles of impeachment.....344, 347, 350, 353, 355
Disorder, disgraceful, in the House when impeachment was voted. 42
Dodge, Jonas S., a witness for the prosecution, shows the delivery by him, as delivery clerk of Adams Express Company, of packages of money sent from New York to W. W. Belknap..... 183
Domestic relations of W. W. Belknap, allusions by Mr. Carpenter to the..... 327
DORSEY, STEPHEN W., a Senator from Arkansas—
oath, the, administered to, by the Chief Justice..... 5
votes by, on the articles of impeachment.....344, 347, 350, 353, 355
Dunn, William McKee, Colonel, a witness for the defense—
evidence concerning the official reputation of W. W. Belknap. 268
cross-examined by the counsel for the prosecution.....268, 269
Durfee, E. H., correction by Mr. Carpenter of his statement concerning 271

E.

EATON, WILLIAM W., a Senator from Connecticut—
oath, the, administered to, by the Chief Justice 4
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment.....114–116
votes by, on the articles of impeachment.....344, 347, 350, 353, 355
EDMUNDS, GEORGE F., a Senator from Vermont—
appointed on a select committee on the impeachment..... 1
on a committee to wait upon the Chief Justice..... 3
oath, the, administered to, by the Chief Justice..... 4
appeal from the decision of the Chair.....259, 342
call by, for the yeas and nays 74, 75, 76, 164, 236, 242

Page.

EDMUNDS, GEORGE F.—*Continued.*
call of one of the counsel for the prosecution to order..... 170
incidental remarks by.....1, 20, 28, 37, 63, 73, 74, 162, 165, 166, 167, 174, 286, 295, 314, 318, 319, 357
interlocutory remarks by, on the evidence 188, 191, 198, 202, 211, 219, 227, 228, 229, 230, 232, 238, 239, 240, 258, 259, 269, 275
remarks by—
on the administration of the oath to Senators 3
on the time fixed for the appearance of William W. Belknap.. 4, 5
on filing the respondent's rejoinder and the surrejoinder of the House 7
on enlarging the time for argument, under Rule 20 10
motion by—
that the court adjourn.....5, 6, 8, 20, 47, 74, 171, 285, 341, 342, 357
that the Senate be cleared and the doors closed 72, 170
that the Senate withdraw for consultation.....11, 14, 22, 26
that the Senate take a recess.....31, 43, 73, 74, 75, 202, 211, 313
that there be a call of the Senate 165, 171
that the message of the House relating to the impeachment of W. W. Belknap be referred to a select committee. Agreed to..... 1
that the Chief Justice be invited to attend and administer to Senators the oath required by the Constitution. Modified and agreed to..... 3
that a summons be issued to William W. Belknap. Agreed to. 4
that the Senate sitting for the impeachment trial adjourns until April 17. Agreed to..... 5
that the House be notified that the Senate is ready to proceed with the trial, and that seats are provided for the members. Agreed to. 6
that the rejoinder be filed April 24, and the surrejoinder April 25. Amended and agreed to..... 7, 8
that the trial proceed on April 27. Agreed to..... 7
that the managers and counsel be excused from attendance until May 18. Amended and agreed to 72
that Mr. Morton's order be amended so as to have a vote on Monday instead of Friday. Agreed to..... 74
that the motion of the respondent to postpone the further hearing of the impeachment until the first Monday in December be denied. Agreed to 14, 15
that the hearing proceed on the 4th of May, and fixing the order in which three of the managers and three of the counsel for the respondent shall be heard. Amended and agreed to..... 19
that the order for the final argument be amended by adding "and that the argument be limited to six hours on each side." Rejected 286
that when the court adjourns it be to June 1, at one o'clock p. m. Agreed to..... 77
that the motion of Mr. Sargent postponing further proceedings be amended by striking out December 6 and inserting July 6. Agreed to 167
that the motion of Mr. Sargent requiring lists of witnesses within twenty-four hours be amended by making the time four days. Accepted 168
that the Secretary issue subpœnas that may be applied for by the respondent for such witnesses to be summoned at the expense of the United States as shall be allowed by a committee to consist of Senators Frelinghuysen, Thurman, and Christiancy; and that subpœnas for all other witnesses for the respondent shall contain the statement that the witnesses therein named are to attend upon the tender on behalf of the respondent of their lawful fees. Agreed to..... 174
that the Senate will resume the consideration of the articles of impeachment, pursuant to Rule 25 341
that the order regulating the final voting be amended, and it having been amended it read thus: That on Tuesday next, the 1st day of August, at twelve o'clock meridian, the Senate shall proceed to vote, without debate, on the several articles of impeachment. The Presiding Officer shall direct the Secretary to read the several articles successively, and after the reading of each article the Presiding Officer shall put the question following, namely: "Mr. Senator ——, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high crime" or "high misdemeanor," as the charge may be, "as charged in this article?" Whereupon such Senator shall rise in his place and answer "guilty" or "not guilty" with his reasons, if any, as provided in the order already adopted. And each Senator shall be permitted to file within two days after the vote shall have been so taken his written opinion, to be printed with the proceedings. Agreed to..... 342
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment 88–91

Page.

EDMUNDS, GEORGE F.—*Continued.*
order reported by, from the select committee on the impeachment 1
that the Senate will take proper order upon the presentation of articles of impeachment, of which due notice shall be given to the House. Agreed to 1
that the Secretary acquaint the House with the action of the Senate. Agreed to 1
point of order submitted by 164
question by—
to Manager Hoar, as to the demurrer of the House to the plea to the jurisdiction 21
to Manager Hoar, regarding a reference to Blount's case 23
to Manager Hoar, asking the reading of the replication in Blount's case 24
to Manager Hoar, whether there is any allegation in the articles that Mr. Belknap was Secretary of War down to March 2, 1876 25
to Manager McMahon, concerning the testimony of W. H. Barnard 198
to Mr. Carpenter, counsel for the respondent, whether he admits that the Secretary of War resigned in consequence of this accusation made against him 246
to Mr. Carpenter, counsel for the respondent, Will the counsel state what they propose to prove by Evans? 252
report by, from the select committee on the impeachment 1
votes by, on the articles of impeachment 344, 347, 350, 353, 355
Emery, Charles F., a witness for the prosecution—
stated the investment of certain funds for W. W. Belknap in a mortgage subsequently assigned to Mrs. Belknap or Mrs. Bower 199, 200
cross-examined by the counsel for the respondent 199, 200
questioned by Mr. Senator Wright 199
ENGLISH, JAMES E., a Senator from Connecticut—
oath, the, administered to, by the presiding officer 7
[Mr. English, having been appointed to fill a vacancy, ceased to be a member of the Senate on the election of Mr. Barnum, May 18, 1876.]
Evans, John S., a witness for the prosecution—
return of the service of the subpœna to, by the Sergeant-at-Arms 227
statements concerning the summoning of, by the Sergeant-at-Arms 271, 272
evidence of, concerning his connection with the post-tradership at Fort Sill 273–275
cross-examined by the counsel for the defense 276–278, 279, 280
re-examined by the counsel for the prosecution 280, 281
recross-examined by the counsel for the defense 281, 282
questioned by—
Mr. Senator Sargent 275
Mr. Senator Randolph 275
Mr. Senator Conkling 276
Mr. Senator Wright 281
Evidence, the—
testimony of—
Adams, George M., a witness for the prosecution 181
Allison, William B., Senator, a witness for the defense 267
Augur, Christopher C., Major-General, a witness for the defense 265, 266
Barnard, William H., a witness for the prosecution 198, 199
Barnard, William T., a witness for the prosecution 217, 218
Bartlett, Edward T., a witness for the prosecution 181
Benét, S. V., Colonel, a witness for the defense 267, 268
Brinkerhoff, Henry S., a witness for the prosecution 243
Clymer, Hiester, a witness for the prosecution .. 245–251, 254, 255
Crosby, H. T., a witness for the prosecution and for the defense 183, 184, 185, 186, 187, 262, 263, 264, 282, 283, 284, 285
Davis, Nelson H., Inspector-General, a witness for the defense 258, 261
Dodge, Jonas S., a witness for the prosecution 183
Dunn, William McKee, Colonel, a witness for the defense, 268, 269
Emery, Charles F., a witness for the prosecution 199, 200
Evans, John S., a witness for the prosecution 227, 271, 272, 273–275, 276–278, 279, 280, 281, 282
Fisher, John J., a witness for the prosecution 252, 253
Hancock, Winfield S., Major-General, a witness for the defense 285
Hazen, William B., Major-General, a witness for the prosecution 228, 230, 231, 233, 234, 243–245
Humphreys, Andrew A., Major-General, a witness for the defense. 268
Kasson, John A., Representative, a witness for the defense .. 269
Kernan, Joseph A., a witness for the prosecution 196, 197
King, Richard, a witness for the prosecution 196
Lowe, Ralph P., a witness for the defense 266, 267
Macfeeley, Robert, Commissary-General, a witness for the defense 257
McDowell, Irwin, Major-General, a witness for the prosecution 187–189, 189, 196

Page.

Evidence, the, testimony of—*Continued.*
McLaughlin, Napoleon B., a witness for the defense 265
Marcy, R. B., Brigadier-General, a witness for the defense .. 268
Marsh, Caleb P., a witness for the prosecution 219–226, 228, 236, 237–242, 243
Miller, Samuel F., Mr. Justice, a witness for the defense 269
Moody, William F., a witness for the prosecution 215
Moss, George W., a witness for the prosecution 182, 183
Pope, John, Major-General, a witness for the defense 257
Reid, Whitelaw, a witness for the prosecution 218, 219
Ruger, Thomas W., colonel, a witness for the defense 267
Sheridan, P. H., Lieutenant-General, a witness for the defense 219, 257
Smalley, E. V., a witness for the prosecution 215
Townsend, E. D., Adjutant-General, a witness for the prosecution and for the defense 200–214, 257, 258, 278, 279
Vilas, Charles N., a witness for the prosecution 198, 199
Whitney, Leonard, a witness for the prosecution 216, 217
Wright, George G., Senator, a witness for the defense 267
Exhibition of articles of impeachment against W. W. Belknap .. 2

F.

FERRY, T. W., a Senator from Michigan, President *pro tempore* of the Senate—
response of, to the impeachment committee of the House 1
direction by, to the Secretary, that the Senate will receive the managers of the House with the articles of impeachment 1
reception of the managers by 1
oath, the, administered to, by the Chief Justice 3
response of, to the managers, after the reading of the articles of impeachment 3
oaths administered by, to Senators 7, 8, 27, 72
announcements by, of the consideration of the articles of impeachment by the Senate 3, 5, 6, 8, 15, 21, 27, 37, 47, 64, 72, 73, 74, 75, 158, 162, 169, 171, 174, 189, 202, 218, 236, 252, 270, 271, 272, 286, 298, 299, 318, 319, 341, 342
notification by, to the managers, that the Senate is organized for the impeachment trial of William W. Belknap 4
that the Senate is ready to hear the replication of the House .. 7
directions by, to the Sergeant-at-Arms 1, 2, 4, 5, 6, 7, 8, 15, 21, 27, 37, 47, 73, 74, 75, 158, 162, 165, 169, 171, 174, 189, 202, 218, 236, 252, 270, 271, 272, 298, 299, 318, 319, 341, 342
direction by, to the Secretary of the Senate, to enter a judgment of acquittal 357
incidental remarks by 3, 11, 12, 14, 15, 19, 21, 37, 47, 64, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 174, 175, 179, 181, 182, 187, 188, 189, 191, 192, 193, 194, 195, 196, 197, 202, 211, 212, 113, 214, 215, 216, 218, 219, 221, 222, 224, 225, 226, 227, 228, 229, 230, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 261, 262, 267, 269, 270, 271, 272, 273, 275, 281, 282, 285, 286, 287, 294, 295, 296, 297, 298, 299, 313, 318, 319, 334, 341, 342
reception of the replication of the House of Representatives by. 7
notification to the respondent that their motion for postponement is denied 15
announcement by, of the action of the Senate in close session 19, 72, 158, 174
rulings by—
that Senators have not the right to address interrogatories to the managers or the counsel for the respondent. Appeal from, sustained 259
that the objection of the counsel for the respondent to a question put to a witness be sustained. Sustained by the Senate 281
votes by, on the articles of impeachment 344, 347, 350, 353, 355
Fifth Avenue Hotel, New York, registers and transient ledgers of, showing dates of the arrival of W. W. Belknap and the time of his sojourn 198
Final judgment in the case—
written opinions on the 358–365
votes of Senators on the 343–357
First National Bank of Washington, deposit tickets of, showing that certain deposits were made by W. W. Belknap. 198, 199
Fisher, John J. a witness for the prosecution—
evidence concerning his connection with the post-tradership at Fort Sill 252, 253
cross-examined by the counsel for the respondent 253
Floyd, case of, allusion to, by Judge Black 13
Free-passes on railroads, allusion by Mr. Carpenter to 323
Fort Sill, Kansas, trading post at—
act of Congress under which it was established at 176
applications for appointment at 263
articles of agreement between Evans and Marsh for trading at the 30
Belknap, W. W., action of, concerning the 177, 186, 200, 203, 204, 205, 209, 210, 277, 278, 301, 302
commissions of, as Secretary of War 200

Page.

Fort Sill, Kansas, trading post at—*Continued.*
correspondence concerning the 176
Evans, John S., trader at 176, 181, 202, 273
Grierson, Colonel, recommendation by, concerning 178, 201, 203, 207, 209, 301, 302
Hazen, General, testimony of, concerning 188, 228–230, 233, 305
introduction of spirituous liquors at 205
Marsh, C. P., connection with the 176, 181, 185
New York Tribune's comments on the 177, 178, 185, 187, 218
payments of money concerning the 179
Robinson, George T., letter from, concerning the 213, 306
FRELINGHUYSEN, FREDERICK T., a Senator from New Jersey—
appointed on a select committee on the impeachment 1
oath, the, administered to, by the Chief Justice 4
incidental remarks by 19, 188, 299
interlocutory remarks by, on the evidence 238, 240, 255, 256
motion by—
that the Secretary notify the House that the Senate is organized for the impeachment trial and is ready to receive the managers. Agreed to 4
that the motion of Mr. Sherman, as amended by Mr. Morton, be amended by striking out "in the presence of the House of Representatives" and inserting in lieu thereof "while Congress is in session" 173
that the court adjourn 251, 252
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment 82–85
votes by, on the articles of impeachment 344, 347, 350, 353, 355
French, John R., Sergeant-at-Arms of the Senate—
announcement by, of the House impeachment committee 1
of the managers 1, 6, 7, 8, 15, 21, 27, 64
oath administered to, by the Chief Justice 6
proclamations by 2, 5, 6, 8, 15, 21, 37, 64, 73, 74, 75, 158, 162, 169, 174, 189, 218, 236, 252, 270, 271, 272
return of, on writs of summons 6, 227
communications from, relating to the summoning of John S. Evans 271, 272

G.

Gifts received by public men, allusions of—
Mr. Black to 318
Mr. Carpenter to 322
Mr. Lord to 340
GOLDTHWAITE, GEORGE, a Senator from Alabama, oath, the, administered to, by the Chief Justice 5
GORDON, JOHN B., a Senator from Georgia—
oath, the, administered to, by the Chief Justice 4
incidental remarks by 169
votes by, on the articles of impeachment 344, 347, 350, 353, 355
Grant, U. S., indorsement concerning the reservation at Fort Sill. 279

H.

HAMILTON, MORGAN C., a Senator from Texas—
oath, the, administered to, by the Chief Justice 4
votes by, on the articles of impeachment 344, 347, 350, 353, 355
HAMLIN, HANIBAL, a Senator from Maine—
oath, the, administered to, by the Chief Justice 4
incidental remarks by 3, 259, 341
motion by, that the rules of proceeding be so amended as to allow subsequent proceedings to be held in open session. Rejected 341
votes by, on the articles of impeachment 344, 347, 350, 353, 356
Hancock, Winfield S., Major-General, a witness for the defense, evidence concerning the official character of W. W. Belknap 285
HARVEY, JAMES M., a Senator from Kansas—
oath, the, administered to, by the Chief Justice 4
motion by, that the reading of the journal be dispensed with .. 252
votes by, on the articles of impeachment 344, 347, 350, 353, 356
Hazen, William B., Major-General, a witness for the prosecution—
evidence concerning the post-tradership at Fort Sill, and his testimony, correspondence, and conversations relating thereto 228–230, 243
cross-examined by counsel for the respondent 230, 231, 233, 234, 243–245
questioned by Mr. Senator Thurman 244
Hill, Clement Hugh, Acting Attorney-General, opinion by, concerning the rights of post-traders, &c 208
HITCHCOCK, PHINEAS W., a Senator from Nebraska—
oath, the, administered to, by the Chief Justice 4
motion by, that the court adjourn 76
votes by, on the articles of impeachment 344, 347, 350, 353, 356
Hoar, Judge, denial of a statement of counsel concerning, by Mr. Manager Lord 357

Page.

Hoar, George F., a Representative from Massachusetts—
appointment of, as manager, notification of, to the Senate 1
incidental remarks by 25
interlocutory remarks by, on the evidence 185, 188, 193, 194, 207, 208, 210, 212, 215, 221, 235, 239, 240, 244, 247, 250, 253, 256, 260, 261
remarks by—
on the manner of filing the replications and surreplications. 7
on the statement by respondent's counsel concerning what had taken place in the House 14
on the application of the counsel for the respondent for a postponement to secure the evidence of an absent witness 259
argument by—
on the question of jurisdiction and the order of proceeding. 19, 20
on the question whether the respondent is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of that office 55–63
Holt, J., Judge Advocate-General, opinion by, on the regulation of post-traders 209
House of Representatives, the—
messages from—
transmitting the notice of impeachment by its committee ... 1
informing the Senate of the appointment of managers to conduct the impeachment, and to exhibit the articles agreed upon 1
committee of, appointed to impeach William W. Belknap 1
reference of the message from, to a select committee 1
impeachment of William W. Belknap in the name of 1
attendance of the, as a Committee of the Whole House, with Hon. Samuel J. Randall as its chairman, and accompanied by Mr. Speaker Kerr and G. W. Adams, Clerk of the House 6
HOWE, TIMOTHY O., a Senator from Wisconsin—
oath, the, administered to, by the Chief Justice 5
incidental remarks by 21, 27, 172, 173, 188, 236, 324
interlocutory remarks by, on the evidence 232, 238
call for the yeas and nays by 75, 191, 238, 298, 342
motions by—
that an order of Mr. Edmunds fixing the time for hearing the arguments be amended by making it May 8. Rejected 19
that the court adjourn 20, 21
that the vote ordering that the galleries be cleared be reconsidered 172
that the order proposed by Mr. Sherman be divided. Agreed to 172
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment 97–100
point of order raised by, that a motion of Mr. Edmunds could not now be considered 342
question by—
to the managers: whether a witness stated where the Robinson letter was kept between the date of its receipt in 1875 and its appearance on the files in 1876 213
to C. P. Marsh, witness for the respondent: Why did you say to Mrs Bower that the child would have money after a time? 241
votes by, on the articles of impeachment 344, 347, 350, 353, 356
Huckleberry, J. H., letter from, concerning the introduction of spirituous liquors in the Indian Territory at Fort Sill 205, 206
Humphreys, Andrew A., Major-General, a witness for the defense, evidence concerning the official reputation of W. W. Belknap 268

I.

INGALLS, JOHN J., a Senator from Kansas—
oath, the, administered to, by the Chief Justice 4
incidental remarks by 3, 286, 295, 299, 341
call by, for the yeas and nays 342
motions by—
that the court take a recess 37
that the gallaries be cleared and the doors closed. Agreed to. 72
that the court adjourn 75, 202, 294
that the motion of Mr. Edmunds concerning the final vote be amended 342
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment 124–126
votes by, on the articles of impeachment 344, 347, 350, 353, 356
Instructions to the commanding officers at Fort Sill and Camp Supply to report on the conduct of the post-traders at those posts 186

J.

Page.

Jenks, George A., a Representative from Pennsylvania—
appointment of, as manager, notification of, to the Senate.... 1
interlocutory remarks by, on the evidence..181, 210, 227, 261, 270, 281
remarks by, on the application of the counsel for the respondent for a postponement to secure the evidence of an absent witness..... 261
argument by—
on the question whether the respondent is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of that office.....47–55
on the evidence and the facts of the case.....306–313
JOHNSTON, JOHN W., a Senator from Virginia—
oath, the, administered to, by the presiding officer..... 27
detained from his seat by the illness of a member of his family. 8
JONES, CHARLES W., a Senator from Florida—
oath, the, administered to, by the Chief Justice..... 4
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment.....137–143
reasons for declining to vote, unless compelled to do so by the Senate 345
JONES, JOHN P., a Senator from Nevada—
oath, the, administered to, by the Chief Justice..... 5
votes by, on the articles of impeachment.....345, 348, 350, 353, 356
Judgment, final, in the case, written opinions on the.....358–365
Judgment of acquittal, the presiding officer directs the Secretary to enter a..... 357
Jurisdiction of the Senate sitting as a court of impeachment, plea of the respondent denying the..... 6
replication of the House of Representatives, asserting the.... 7
rejoinder of the respondent to the replication of the House on the 8
surrejoinder of the House of Representatives to the rejoinder of the respondent on the..... 9
Justice, Department of, allusion to, by Judge Black..... 13

K.

Kasson, John A., Representative, a witness for the defense, evidence concerning the reputation of W. W. Belknap in Iowa..... 269
KELLY, JAMES K., a Senator from Oregon—
oath, the, administered to, by the Chief Justice..... 4
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment. [Not furnished for publication.]
votes by, on the articles of impeachment.....345, 348, 350, 353, 356
Keokuk, Iowa, reputation of W. W. Belknap at.....266, 267
KERNAN, FRANCIS, a Senator from New York—
oath, the, administered to, by the Chief Justice..... 4
incidental remarks by.....161, 170, 287
interlocutory remarks by, on the evidence.....189, 192, 236
opinion of, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment.....153, 154
motion by—
that the motion of Mr. Whyte be amended so that it will read: that in default of an answer within ten days by the respondent to the articles of impeachment, the trial shall proceed as on a plea of not guilty..... 161
withdrawn 162
that the court adjourn..... 236
votes by, on the articles of impeachment.....345, 348, 350, 353, 356
Kernan, Joseph A., a witness for the prosecution, states the accounts of C. P. Marsh in the National Bank of Commerce of New York, and checks paid.....196, 197
Kerr, M. C., Speaker of the House of Representatives—
attends..... 6
allusion to, by Mr. Carpenter..... 321
KEY, DAVID M., a Senator from Tennessee—
oath, the, administered to, by the Chief Justice..... 4
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment 145–147
votes by, on the articles of impeachment.....345, 348, 350, 353, 356
King, Richard, a witness for the prosecution, identifies certificates of deposit in the National Bank of Commerce of New York issued to C. P. Marsh, payable to W. W. Belknap..... 196

Page.

Knott, J. Proctor, a Representative from Kentucky—
appointment as manager, notification of, to the Senate..... 1
argument by, on the question whether the respondent is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of that office.....45–47, 64–68

L.

Lapham Elbridge G., a Representative from New York—
appointment of, as manager, notification of, to the Senate..... 1
interlocutory remarks on the evidence by.....191, 193, 209, 227, 230, 238, 239, 256, 262, 263, 264, 267, 269, 282, 283, 284
argument by—
on the motion submitted by the respondent that the court set aside its order asserting jurisdiction, for the reason that it was not passed with the concurrence of two-thirds of the Senators present..... 164
on the questions of fact connected with the case.....299–306
Letter from C. P. Marsh to W. W. Belknap, asking that the appointment of post-trader at Fort Sill be made in the name of J. S. Evans 185
from General Sheridan to W. W. Belknap concerning the post-trader circular..... 257
LOGAN, JOHN A., a Senator from Illinois—
oath, the, administered to, by the Chief Justice..... 4
incidental remarks by 164, 224, 227, 318
interlocutory remarks by, on the evidence..... 211
remarks by—
on the right of a Senator to question witnesses.....241, 242
on the management of the case by the counsel 248
call for the yeas and nays by..... 341
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment. [Not furnished for publication.]
motion by, that the court take a recess 75
question by—
to Manager Hoar, regarding the pleadings of the managers.23, 24
to Manager Jenks: Article 61 of the Articles of War provides that any officer who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service. In a case where an officer of the Army should be tried under this article of war, after becoming a private citizen, what would be the judgment of the court-martial?..... 52
to General McDowell, a witness for the prosecution 188
to Adjutant-General Townsend, respecting the duties of the Judge-Advocate-General 213
to C. P. Marsh, a witness for the prosecution, concerning his correspondence with W. W. Belknap..... 224
to C. P. Marsh, a witness for the prosecution: Prior to the sending of the first money, had you said anything to any person or had any person ever said anything to you on the subject of sending money to General Belknap; if so, who was it?.....238, 239
to C. P. Marsh, a witness for the prosecution: From the conversation with the present Mrs. Belknap, mentioned by you in your answer to my former interrogatory, you spoke of an understanding with the former Mrs. Belknap now deceased; please state what that understanding was..... 241
votes by, on the articles of impeachment.....345, 348, 350, 553, 356
Lord, Scott, a Representative from New York—
appointment of, as manager, notification of, to the Senate..... 1
presentation of the articles of impeachment by..... 1–3
request by, for the issuing of process against William W. Belknap..... 4
announcement by, of the attendance of the House as a Committee of the Whole 6
request by, for a copy of the plea of respondent..... 6
presentation by, of the replication of the House of Representatives..... 7
motion submitted by—
that the court reconsider the order giving the respondent's counsel the concluding argument..... 19
that on the 11th day of July the court will proceed to hear the evidence on the merits in the trial of this case..162, 165
resolution of Mr. Senator Sargent substituted for, amended, and agreed to.....165–167
that the respondent, W. W. Belknap, shall not be allowed to make any further plea or answer to the articles of impeachment preferred against him on the part of the House of Representatives, but that the future proceedings proceed as upon a general plea of not guilty..... 170
remarks by—
on fixing a time for the rejoinder to be filed..... 7

Page.

Lord, Scott—remarks by—*Continued.*
on a postponement of the trial until December and an enlargement of the time for argument 10, 11
on the request of the counsel for respondent for a postponement of the trial until May 15 27
on fixing a time for the trial 161, 165, 171, 172
on continuing the trial until some day in November 171, 172
on the order of the final argument 285, 286, 294
incidental remarks by 12, 15, 37, 165, 285, 306
argument by—
on the motion of the managers that the evidence bearing on the question of jurisdiction be given before the arguments shall be presented on that question, and fixing the time for pleadings 9, 16
on the motion of Mr. Conkling that the Senate first hear and determine the question of jurisdiction 17, 18
on the question of jurisdiction and the order of proceeding .. 22
on the question whether the respondent is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation 31–37
on the order of the Senate overruling the demurrer of the respondent to the replication of the House of Representatives and the argument of the respondent's counsel thereupon 159, 160
on the answer of the respondent and the motion that he shall not be allowed to make any further plea, but that the future proceedings shall proceed as upon a general plea of not guilty 170
on closing the case for the prosecution 334–341
denial by, of an allegation by counsel for the respondent that Judge Hoar gave the President a library 357
Lowe, Ralph P., a witness for the defense—
evidence concerning the reputation of W. W. Belknap at Keokuk, Iowa 266
cross-examined by the counsel for the prosecution 266
re-examined by the counsel for the defense 266, 267
Lynde, William P., a Representative from Wisconsin—
appointment of, as manager, notification of, to the Senate 1
incidental remarks by 163
remarks by, concerning the witnesses for the prosecution 174
interlocutory remarks by, on the evidence 188, 192, 210, 211
argument by—
on the motion submitted by the respondent that the court set aside its order asserting jurisdiction, for the reason that it was not passed with the concurrence of two-thirds of the Senators present 163
opening the case before the court 175–179
on the question of jurisdiction upon the final vote 295–298

M.

McCrary, George W., his attendance as a witness desired by the defense 266
McCreery, Thomas C., a Senator from Kentucky—
oath, the, administered to, by the Chief Justice 4
motions by, that the court adjourn 74, 218
votes by, on the articles of impeachment 345, 348, 350, 353, 356
McDowell, Irvin, Major-General, a witness for the prosecution—
stated how he learned that there were abuses connected with the post-tradership at Fort Sill, and what steps were taken by the Secretary of War at his suggestion to rectify them 187–189
cross-examination of, by the counsel for the respondent 189–196
questioned by Mr. Senator Logan 188
correction of the testimony of 271
McDonald, Joseph E., a Senator from Indiana—
oath, the, administered to, by the Chief Justice 4
incidental remarks by 19, 20
motion by, that the order fixing the order of discussion of the jurisdictional question be reconsidered 20
amendment to, by Mr. Cameron. Rejected 21
modified 21
rejected 27
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment 77, 78
question by—
to Manager Hoar, regarding a reference to Blount's case 23
to Mr. Blair, whether if the term of office of the accused should terminate during the trial that would discontinue the cause 42
votes by, on the articles of impeachment 345, 348, 350, 353, 356
McLaughlin, Napoleon B., a witness for the defense, evidence concerning the appointment of J. S. Evans as post-trader 265
McMahon, John A., Representative from Ohio—
appointment of, as manager, notification of, to the Senate 1

Page.

McMahon, John A.—*Continued.*
incidental remarks by 167, 168, 181, 182, 189, 337
interlocutory remarks by, on the evidence ... 181, 183, 184, 185, 186, 187, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 262, 263, 264, 265, 266, 267, 268, 269, 270, 273, 274, 275, 276, 277, 279, 280, 281, 282, 283, 284
examination by, of the witnesses for the prosecution—
Adams, George M 181
Barnard, William H 198, 199
Barnard, William T 217, 218
Bartlett, Edward T 181
Brinkerhoff, Henry S 243
Clymer, Hiester, a Representative from Pennsylvania ... 245–251, 254, 255
Crosby, H. T., chief clerk of the War Department 183, 184, 185, 186, 187
Dodge, Jonas S 183
Emery, Charles F 199, 200
Evans, John S 273–275, 280, 281
Fisher, John J 252, 253
Hazen, William B., Major-General 228–230, 243
Kernan, Joseph A 196, 197
King, Richard 196
McDowell, Irvin, Major-General 187–189
Marsh, Caleb P 219–226, 228–236, 237–242
Moody, William F 215
Moss, George W 182, 183
Reid, Whitelaw 218, 219
Smalley, E. V 215
Townsend, E. D., Adjutant-General 200–209, 214
Vilas, Charles N 198
Whitney, Leonard 216, 217
cross-examination by, of the witnesses for the defense—
Augur, Christopher C., Major-General 265, 266
Benét, S. V., Chief of Ordnance 268
Crosby, H. T., chief clerk of the War Department 263, 264, 265, 283, 284, 285
Dunn, William McKee, Judge Advocate General 268, 269
Lowe, Ralph P 266
Macfeeley, Robert, Commissary-General 257
Townsend, E. D., Adjutant-General 258
Wright, George G., a Senator from Iowa 267
statement by, in answer to Mr. Carpenter, counsel for the respondent 160
McMillan, Samuel J. R., a Senator from Minnesota—
oath, the, administered to, by the Chief Justice 4
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment 122–124
question by—
to the presiding officer: Whether there is a proper return of service of the witnesses by the Sergeant-at-Arms on the record 174
to the managers: Is it not charged in Article 3 of the articles of impeachment that Evans was retained in office by the Secretary of War not only corruptly, but that his retention there was "to the great injury and damage of the officers and soldiers of the Army of the United States stationed at said post, as well as of emigrants, freighters, and other citizens of the United States," &c.; and whether, although that issue may not be the only issue in the case, it is not an issue that may be a material one, and upon which the Senate will have to pass in their finding? 191
to Mr. Manager Lynde: Whether the question of jurisdiction in a trial of this kind is a preliminary question 208
votes by, on the articles of impeachment 345, 348, 350, 353, 356
Macfeely, Robert, Commissary-General, a witness for the defense—
evidence concerning sutlers and post-traders, and the official character of W. W. Belknap as Secretary of War 257
cross-examined by the counsel for the prosecution 257
Managers, on the part of the House—
appearance of, the, in the Senate sitting as a court of impeachment 1
presentation by, of the articles of impeachment against William W. Belknap 2
requests by, for the issuing of a summons to W. W. Belknap ... 4
requests by, for a copy of the plea filed by the respondent 6
presentation by, of the replication of the House of Representatives 7
requests by, that the trial may be hastened 7
presentation by, of the surrejoinder of the House of Representatives 9

Page.

Managers on the part of the House—*Continued.*
motion submitted by, that the evidence bearing on the question of jurisdiction be submitted before the arguments shall be presented on that question 9
argument by, on the question of the right to open and close, and also in regard to the number of managers who shall be allowed to speak 19, 20, 21, 22–26
arguments by, on the question of jurisdiction 31–47, 47–69
remarks by, on the order of pleadings 163, 164, 165, 168, 170
argument by, in opening the case 175–179
examination by, of witnesses for the prosecution 179–256
cross-examination by, of witnesses for the defense 257–284
arguments by—
on the law of the case 295–298
on the facts of the case 299–306
on the evidence 306–313
reviewing the law, the facts, and the evidence 334–341
explanation by 357
Marcy, R. B., Brigadier-General, a witness for the defense, evidence concerning the official reputation of W. W. Belknap 268
Maroa, Illinois, investment in real estate at, by W. W. Belknap. 199
Marsh, Caleb P., a witness for the prosecution—
evidence showing his relations with W. W. Belknap and the post-tradership at Fort Sill 219–226, 228, 236
cross-examined by counsel for the respondent 236, 237, 242, 243
re-examined by the counsel for the prosecution 237–242
questioned by—
Mr. Senator Logan 238, 239, 241, 242
Mr. Senator Dawes 239
Mr. Senator Howe 241
Mr. Senator Oglesby 243
MAXEY, SAMUEL B., a Senator from Texas—
oath, the, administered to, by the Chief Justice 4
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment 91–93
question by, to Manager Hoar, regarding the pleading of the managers 24
votes by, on the articles of impeachment 348, 351, 353, 356
MERRIMON, A. S., a Senator from North Carolina—
oath, the, administered to, by the Chief Justice 4
interlocutory remarks by, on the evidence 227, 232
motion by—
that the Senate return to its Chamber without action in conference on the motion of the respondent to postpone the further hearing of the impeachment until December 14
that there be a call of the Senate. Agreed to 64
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment 96, 97
question by—
to Mr. Manager Hoar, as to whether the managers claim to reply in the discussion of all questions as a matter of right, or only on the ground of practice 26
to the counsel for the respondent: at what time the finding of a court-martial on George T. Robinson was pending for approval by the War Department 212
statement by, that his colleague, Mr. Ransom, had been called away by sickness in his family 341
votes by, on the articles of impeachment 345, 348, 351, 353, 356
Miller, Samuel F., Mr. Justice, a witness for the defense, evidence concerning the official reputation of W. W. Belknap .. 269
MITCHELL, JOHN H., a Senator from Oregon—
oath, the, administered to, by the Chief Justice 4
interlocutory remarks by, on the evidence 237
motion by, that attachments issue for all witnesses regularly subpœnaed on the part of the prosecution who have not answered to the roll-call and with whom there is no understanding that they are to be notified by the managers when required to be present 174
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwitstanding his resignation before impeachment 108–112
question by—
to the managers: The Constitution provides that when the President of the United States is tried on impeachment, the Chief Justice shall preside. Suppose a late President were impeached for high crimes and misdemeanors committed while President, and presented at the bar of the Senate for trial, who would preside, the Chief Justice or the President of the Senate? 47

Page.

MITCHELL, JOHN H.—question by—*Continued.*
to the counsel for the respondent, whether fixing the 19th of June for the trial will give the respondent's counsel such time as they may deem necessary 166
to the counsel for the respondent, whether they are able to state at what time a letter from George T. Robinson was filed in the War Department 212
to Caleb P. Marsh, a witness for the prosecution: Why did you send to W. W. Belknap, Secretary of War, the one-half of the various sums of money received by you from Evans at Fort Sill? 237
to Mr. Manager Lynde: Suppose the plea in this case had been that of former conviction or former acquittal, would it have required a two-third majority to determine the issue; and if the plea were overruled by a mere majority vote, would the Senators voting in the minority be legally bound by such decision? What difference is there, if any, between the case just supposed and the case at bar, in reference to the requisite majority to determine the issue? 297
votes by, on the articles of impeachment ... 345, 348, 351, 354, 356
Money, receipt of, by W. W. Belknap from C. P. Marsh. 182, 183, 184, 197
Moody, William F., a witness for the prosecution—
evidence concerning the shipments of money by Adams Express Company from New York to Washington 215
cross-examined by counsel for the respondent 215
MORRILL, JUSTIN S., a Senator from Vermont—
oath, the, administered to, by the Chief Justice 4
motion by—
to amend an order of Mr. Edmunds excusing the managers and counsel from attendance until May 18, amended by Mr. Burnside adjourning the court until May 15, by excusing them from attendance until further notice. Agreed to 72
to adjourn the court until Monday, May 29, at ten o'clock .. 75
to amend a resolution of Mr. Morton, so that it will read: That the demurrer of the respondent to the replication of the House of Representatives to the plea of the respondent be, and the same is hereby, overruled; and that the plea of the respondent to the jurisdiction of the Senate be, and the same is hereby, overruled; and that the articles of impeachment are sufficient to show that the Senate has jurisdiction of the case, and that the respondent answer to the merits of the accusation contained in the articles of impeachment 76
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment 112, 113
question by, submitted to the Senate as a substitute for the question submitted by Mr. Morton: Has the Senate power to entertain jurisdiction in the pending case of the impeachment by the House of Representatives of William W. Belknap, late Secretary of War, notwithstanding the facts alleged in relation to his resignation? 73
votes by, on the articles of impeachment 345, 348, 351, 354, 356
MORRILLL, LOT M., a Senator from Maine—
oath, the, administered to, by the Chief Justice 5
incidental remarks by 167
motion by, that the floor and galleries be cleared for deliberation 167
[Senator Morrill resigned on the 12th of July, 1876.]
MORTON, OLIVER P., a Senator from Indiana—
oath, the, administered to, by the Chief Justice 4
incidental remarks by 3, 4, 165, 191, 272
interlocutory remarks by, on the evidence 242
call by, for the yeas and nays 173
motion by—
that the court proceed to vote on Friday next at one o'clock, to vote without further debate, upon the pending and cognate questions. Amended and agreed to 75
that the power of impeachment created by the Constitution does not extend to a person who is charged with the commission of a high crime while he was a civil officer of the United States and acting in his official character, but who had ceased to be such officer before the finding of articles of impeachment by the House of Representatives. Laid on the table 76
that the Senate retire for consultation. Withdrawn 166
that the galleries be cleared, that the court may deliberate. Rejected 166
that the motion of Mr. Sherman be amended by adding, that the impeachment can only proceed in the presence of the House of Representatives. Withdrawn 173
that the motion of Mr. Sherman be amended by adding the words "and in the presence of the House of Representatives." Rejected 173

Page.

MORTON, OLIVER P.—motion by—*Continued.*
that on questions of the admissibility of testimony the discussion shall be limited to one counsel for the respondent and to one manager for the House of Representatives, and shall not extend beyond ten minutes on each side. Withdrawn 191
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment?.....81, 82
question by—
to Manager Knott: Whether in England a person who has been punished by the courts for crimes committed in office has, after retiring from office, been impeached and punished by Parliament, or where a person has been impeached and punished in Parliament, has he afterward been punished by the courts for the same offenses? 66
modified 76
to the Senate, for consideration: Is there power in Congress to impeach a person for crime committed while in office, if such person had resigned the office and such resignation had been accepted before the finding of articles of impeachment by the House?..... 73
to C. P. Marsh, a witness for the prosecution: Did General Belknap personally or through any person or by letter ever inquire of you why this money was sent, and did you in any way ever assign a reason to him for it?... 239
to C. P. Marsh, a witness for the prosecution: How often after the first money was sent to Belknap and before your examination before the committee of the House did you meet General Belknap, and was the money ever referred to in conversation at any of these interviews?. 242
vote by, on the articles of impeachment..... 356
Moss, George W., a witness for the prosecution, shows the transportation of different sums of money, at different times, by Adams Express Company, from C. P. Marsh at New York to W. W. Belknap at Washington.....182, 183
Motions submitted to the court—
by Mr. Senator Allison—
that the consultations and opinions expressed in secret session be taken down by the reporters and printed in confidence for the use of Senators 73
that the Senate consider the resolution submitted by him providing for the reporting in confidence of the proceedings had and opinions expressed in secret session. Rejected 73
that the court take a recess.....73, 74
that the order fixing the 6th of July for the trial be amended by making it the 19th of November 173
that the question on Mr. Edmunds's motion concerning the final vote be divided..... 342
by Mr. Senator Anthony—
that the court adjourn 15
that the court retire for deliberation 18, 166
that an order of Mr. Edmunds, fixing the time for hearing the arguments, be amended by making it May 15. Rejected 19
that an order of Mr. Sargent, fixing the time for hearing the evidence, be amended by making it July 11. Amended. 166
that an order of postponement be laid on the table. Agreed to..... 287
by Mr. Senator Bayard—
that the second resolution of Mr. Thurman be amended. Agreed to 76
that the third resolution of Mr. Thurman be amended. Agreed to 76
that the court adjourn 270
that as a condition-precedent to the order for postponement of his trial asked for on the 12th instant by the respondent, it is ordered that the respondent inform the Senate what in substance he proposes to prove by John S. Evans, the witness on the ground of whose absence postponement is asked..... 271
by Mr. Black, counsel for the respondent—
that the court set aside its order asserting jurisdiction for the reason that it was not passed with the concurrence of two-thirds of the Senators present..... 162
that this cause be now continued until some convenient day in November..... 171
that counsel for the accused object to the evidence now offered and to all evidence to support the opening of the managers, on the ground that there can be no legal conviction, the Senate having already determined the material and necessary fact that the defendant is not, and was not when impeached, a civil officer of the United States. Objection overruled..... 181

Page.

Motions submitted to the court—*Continued.*
by Mr. Blair, counsel for the respondent, that an order be made upon the managers on the part of the House of Representatives to furnish within twenty-four hours to the accused or his counsel a list of the witnesses whom they intend to call, together with the particulars of the facts which they expect to prove by them..... 167
by Mr. Senator Boutwell, that the court first hear and determine the question of jurisdiction, and that four managers may be allowed to submit arguments thereupon. Agreed to 27
by Mr. Senator Burnside—
that an order of Mr. Edmunds, fixing the time for hearing the arguments, be amended by making it May 16. Rejected 19
that an order of Mr. Edmunds, excusing the managers and counsel from attendance, be amended by adding that the court adjourn until May 15. Agreed to 72
that an order of Mr. Sherman, fixing the time of adjournment of the court to May 15, be amended by making it May 16. Rejected..... 72
by Mr. Carpenter, counsel for the respondent—
that they be furnished a copy of the replications and time to frame surreplications 7
that the issues of fact be closed on the question of jurisdiction..... 10
that a postponement until Monday, May 15, be granted..... 27
that a postponement be granted until the arrival of John S. Evans, whose testimony is material and important for the defense..... 269
that an order be made that the further trial of this cause be postponed until notice be given by the Senate to the House of Representatives of the United States and to the respondent 271
by Mr. Senator Christiancy—
that the motion of Mr. Morrill be amended by inserting: "That W. W. Belknap, the respondent, is not amenable to trial by impeachment for acts done as Secretary of War, he having resigned said office before impeachment" 76
that the second resolution of Mr. Thurman be amended by substituting: "Whereas the Constitution of the United States provides that no person shall be convicted on impeachment without the concurrence of two-thirds of the members present; and whereas more than one-third of all the members of the Senate have already pronounced their conviction that they have no right or power to adjudge or try a citizen holding no public office or trust when impeached by the House of Representatives; and whereas the respondent, W. W. Belknap, was not when impeached an officer, but a private citizen of the United States and of the State of Iowa; and whereas said Belknap has, since proceedings of impeachment were commenced against him, been indicted and now awaits trial before a judicial court for the same offenses charged in the articles of impeachment, which indictment is pursuant to a statute requiring in case of conviction (in addition to fine and imprisonment) an infliction of the utmost judgment which can follow impeachment in any case, namely, disqualification ever again to hold office: *Resolved*, That in view of the foregoing facts it is inexpedient to proceed further in the case." Withdrawn after debate 76
by Mr. Senator Cockrell, that the amendment of Mr. Edmunds to the amendment of Mr. Sargent be so amended as to fix the time for trial on June 19. Rejected..... 167
by Mr. Senator Conkling—
that the Senate first hear and determine the question of jurisdiction..... 17
that an order of Mr. Edmunds fixing the time for hearing the arguments and the order in which they shall be made be amended. Agreed to 19
that the court take a recess 74
that an order of Mr. Morton be amended. Agreed to..... 75
that the court adjourn 77, 236
that the first resolution of Mr. Thurman be amended by inserting at the end thereof, "before he was impeached"..... 76
that the motion of Mr. Sherman be amended by adding that the impeachment can only proceed while Congress is in session..... 173
that the Senate will receive any evidence, otherwise competent, which the counsel for the respondent assure the Senate will be connected with the case by the testimony of the witness Evans, now absent, but whom the respondent duly asked to have summoned and who is expected to appear 261

Page.

Motions submitted to the court, by Mr. Senator Conkling—*Cont'd.*
that the managers proceed to examine the witness Evans in chief; or, should they decline to do so, the respondent may proceed to examine the witness in chief, with the right of the managers to cross-examine him like any other witness 273
that the three managers and three counsel for the respondent may be heard in the concluding argument, in the order which they state to the Senate they have agreed upon. Agreed to 286
that when called to vote whether the articles of impeachment or either of them are sustained, any Senator who votes in the negative shall be at liberty to state, if he chooses, that he rests his vote on the absence of guilt proved in fact, or on the want of jurisdiction, as the case may be; and the vote shall be entered in the journal accordingly. Amended 341
by Mr. Senator Cooper, that the court adjourn 37
by Mr. Senator Davis, that the court adjourn 73
by Mr. Senator Edmunds—
that the court adjourn 5, 6, 8, 20, 47, 74, 171, 285, 341, 342, 357
that the Senate be cleared and the doors closed 72, 170
that the Senate withdraw for consultation 11, 14, 22, 26
that the Senate take a recess 31, 43, 73, 74, 75, 202, 211, 313
that there be a call of the Senate 165, 171
that the message of the House relating to the impeachment of W. W. Belknap be referred to a select committee. Agreed to 1
that the Chief Justice be invited to attend and administer to Senators the oath required by the Constitution. Modified and agreed to 3
that a summons be issued to William W. Belknap. Agreed to. 4
that the Senate sitting for the impeachment trial adjourns until April 17. Agreed to 5
that the House be notified that the Senate is ready to proceed with the trial, and that seats are provided for the members. Agreed to 6
that the rejoinder be filed April 24, and the surrejoinder April 25. Amended and agreed to 7, 8
that the trial proceed on April 27. Agreed to 7
that the managers and counsel be excused from attendance until May 18. Amended and agreed to 72
that Mr. Morton's order be amended so as to have a vote on Monday instead of Friday. Agreed to 74
that the motion of the respondent to postpone the further hearing of the impeachment until the first Monday in December be denied. Agreed to 14, 15
that the hearing proceed on the 4th of May, and fixing the order in which three of the managers and three of the counsel for the respondent shall be heard. Amended and agreed to 19
that the order for the final argument be amended by adding "and that the argument be limited to six hours on each side." Rejected 286
that when the court adjourns it be to June 1, at one o'clock p. m. Agreed to 77
that the motion of Mr. Sargent postponing further proceedings be amended by striking out December 6 and inserting July 6. Agreed to 167
that the motion of Mr. Sargent requiring lists of witnesses within twenty-four hours be amended by making the time four days. Accepted 168
that the Secretary issue subpœnas that may be applied for by the respondent for such witnesses to be summoned at the expense of the United States as shall be allowed by a committee to consist of Senators Frelinghuysen, Thurman, and Christiancy; and that subpœnas for all other witnesses for the respondent shall contain the statement that the witnesses therein named are to attend upon the tender on behalf of the respondent of their lawful fees. Agreed to 174
that the order regulating the final voting be amended, and it having been amended it read thus: That on Tuesday next, the 1st day of August, at twelve o'clock meridian, the Senate shall proceed to vote, without debate, on the several articles of impeachment. The presiding officer shall direct the Secretary to read the several articles successively, and after the reading of each article the presiding officer shall put the question following, namely: "Mr. Senator ——, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high crime" or "high misdemeanor," as the charge may be, "as charged in this article?" Whereupon such Senator shall rise in his place and answer "guilty" or "not guilty" with his reasons, if any, as provided in the order already adopted. And each Senator shall be permitted to file within two days after the vote shall have been so taken his written opinion, to be printed with the proceedings. Agreed to 342

Page.

Motions submitted to the court, by Mr. Senator Edmunds—*Cont'd.*
that the Senate will resume the consideration of the articles of impeachment pursuant to Rule 25 341
by Mr. Senator Frelinghuysen—
that the Secretary notify the House that the Senate is organized for the impeachment trial and is ready to receive the managers. Agreed to 4
that the motion of Mr. Sherman, as amended by Mr. Morton, be amended by striking out "in the presence of the House of Representatives" and inserting in lieu thereof "while Congress is in session" 173
that the court adjourn 251, 252
by Mr. Senator Hamlin, that the rules of proceedings be so amended as to allow subsequent proceedings to be held in open session. Rejected 341
by Mr. Senator Harvey, that the reading of the Journal be dispensed with 252
by Mr. Senator Hitchcock, that the court do now adjourn 76
by Mr. Senator Howe—
that an order of Mr. Edmunds fixing the time for hearing the arguments be amended by making it May 8. Rejected 19
that the court adjourn 20, 21
that the vote ordering that the galleries be cleared be reconsidered 172
that the order proposed by Mr. Sherman be divided. Agreed to 172
by Mr. Senator Ingalls—
that the court take a recess 37
that the galleries be cleared and the doors closed 72
that the court adjourn 75, 202, 294
that the motion of Mr. Edmunds concerning the final vote be amended 342
by Mr. Senator Kernan—
that the motion of Mr. Whyte be amended so that it will read: that in default of an answer within ten days by the respondent to the articles of impeachment, the trial shall proceed as on a plea of not guilty 161
withdrawn 162
that the court adjourn 236
by Mr. Senator Logan, that the court take a recess 75
by Mr. Manager Lord—
that the court reconsider the order giving the respondent's counsel the concluding argument 19
that on the 11th day of July the court will proceed to hear the evidence on the merits in the trial of this case .. 162, 165
resolution of Mr. Senator Sargent substituted for, amended, and agreed to 165–167
that the respondent, W. W. Belknap, shall not be allowed to make any further plea or answer to the articles of impeachment preferred against him on the part of the House of Representatives, but that the future proceedings proceed as upon a general plea of not guilty 170
by Mr. Senator McCreery, that the court adjourn 74, 218
by Mr. Senator McDonald—
that the order fixing the order of discussion of the jurisdictional question be reconsidered 20
amendment to, to by Mr. Cameron. Rejected 21
modified 21
rejected 27
by Mr. Senator Merrimon—
that the Senate return to its Chamber without action in conference on the motion of the respondent to postpone the further hearing of the impeachment until December .. 14
that there be a call of the Senate. Agreed to 64
by Mr. Senator Mitchell, that attachments issue for all witnesses regularly subpœnaed on the part of the prosecution who have not answered to the roll-call and with whom there is no understanding that they are to be notified by the managers when required to be present .. 174
by Mr. Senator Morrill, of Vermont—
that an order of Mr. Edmunds excusing the managers and counsel from attendance until May 18, amended by Mr. Burnside adjourning the court until May 15, be further amended by excusing them from attendance until further notice. Agreed to 72
that the court adjourn until Monday, May 29, at ten o'clock. 75
that a resolution of Mr. Morton be amended so that it will read: That the demurrer of the respondent to the replication of the House of Representatives to the plea of the respondent be, and the same is hereby, overruled; and that the plea of the respondent to the jurisdiction of the Senate be, and the same is hereby, overruled; and that the articles of impeachment are sufficient to show that the Senate has jurisdiction of the case, and that the respondent answer to the merits of the accusation contained in the articles of impeachment 76
by Mr. Senator Morrill, of Maine, that the floor and galleries be cleared 167

Page.

Motions submitted to the court—*Continued.*
by Mr. Senator Morton—
that the court proceed to vote on Friday next at one o'clock, to vote without further debate, upon the pending and cognate questions. Amended and agreed to 75
that the power of impeachment created by the Constitution does not extend to a person who is charged with the commission of a high crime while he was a civil officer of the United States and acting in his official character, but who had ceased to be such officer before the finding of articles of impeachment by the House of Representatives. Laid on the table 76
that the Senate retire for consultation. Withdrawn 166
that the galleries be cleared. Rejected 160
that the motion of Mr. Sherman be amended by adding, that the impeachment can only proceed in the presence of the House of Representatives. Withdrawn 173
that the motion of Mr. Sherman be amended by adding the words "and in the presence of the House of Representatives." Rejected 173
that on questions of the admissibility of testimony the discussion shall be limited to one counsel for the respondent and to one manager for the House of Representatives, and shall not extend beyond ten minutes on each side. Withdrawn 191
by Mr. Senator Oglesby, that the motion of Mr. Morton fixing the date for a vote without further debate upon the pending and cognate questions be amended. Rejected. 75
by Mr. Senator Paddock—
that an order of Mr. Sherman, fixing the time of adjournment of the court to May 15, be amended by inserting May 20. Rejected 72
that an order of Mr. Morton be amended so that it will read: That the Senate sitting as a court of impeachment take a recess until 7.30 o'clock, that the vote upon the question of jurisdiction be taken at eleven o'clock this evening, and that Senators who may desire to file opinions in the case shall be permitted to do so before the 10th of June next. Rejected 75
that the first resolution of Mr. Thurman be amended so that it will read: That William W. Belknap, late Secretary of War, having ceased to be a civil officer of the United States by reason of his resignation before proceedings in impeachment were commenced against him by the House of Representatives, the Senate cannot take jurisdiction in this case. Rejected 76
by Mr. Senator Robertson, that the court adjourn 269
by Mr. Senator Sargent—
that the court return to the Senate Chamber 19
that Mr. Sherman's motion be amended by striking out the limit of the time of the discussion. Agreed to 27
that there be a call of the Senate. Agreed to 31
that Mr. Sherman's motion be amended by striking out Monday and inserting Saturday. Rejected 72
that the court adjourn 72, 73, 74
that the court take a recess 73, 187
that the court will proceed to hear the evidence on the 6th of July. Amended and agreed to 165, 166, 167
that the managers and the counsel for the respondent furnish to each other lists of the witnesses that they intend to summon. Amended and agreed to 168, 169
that the motion of Mr. Edmunds concerning the final vote be amended 342
by Mr. Senator Saulsbury—
that the amendment by Mr. Morton to the motion of Mr. Sherman be amended by adding after the words "House of Representatives" the words "or its managers" 173
by Mr. Senator Sherman—
that for Mr. Edmunds's motion that the motion of the respondent for postponement be denied, be substituted that the managers be asked if they wish to be heard on this question of postponement. Rejected 14, 15
that the court adjourn until May 15, and that the argument of the question of jurisdiction be confined to eight hours on each side. Amended and agreed to 27
that the court adjourn until May 15, and that the argument of the question of jurisdiction be confined to nine hours on each side. Rejected 28
that Mr. Alcorn he excused from voting for the reasons stated by him. Agreed to 73
to postpone the pending and all prior orders and proceed to the consideration of the order submitted by Mr. Whyte fixing the time at which the vote on the question of jurisdiction shall be taken 74
that the court adjourn 63, 72, 74, 75, 168, 189, 272, 298, 318
to amend the motion of Mr. Whyte so that it will read: That this court adjourn until Tuesday next, and in the mean time the defendant have leave to plead, answer, or demur herein 162
that the galleries be cleared 172

Page.

Motions submitted to the court, by Mr. Senator Sherman—*Cont'd.*
that the further reading of the journal be dispensed with ... 218, 270, 298
that the court take a recess 319
that the motion of Mr. Edmunds concerning the final vote be amended 341
by Mr. Senator Thurman—
that the court adjourn 19, 27, 236, 271, 319
that there be a call of the Senate, sitting as a court 47
that in the opinion of the Senate William W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office. Amended and passed 76
that the House of Representatives and the respondent be notified that on the — day of ——, at twelve o'clock meridian, the Senate will deliver its judgment in open Senate on the question of jurisdiction raised by the pleadings, at which time the managers on the part of the House and the respondent are notified to attend. Amended and passed 75, 76
that at the time specified in the foregoing resolution the President of the Senate shall pronounce the judgment of the Senate as follows: "It is ordered by the Senate sitting for the trial of the articles of impeachment preferred by the House of Representatives against William W. Belknap, late Secretary of War, that the demurrer of said William W. Belknap to the replication of the House of Representatives to the plea to the jurisdiction filed by said Belknap be, and the same hereby is, overruled; and, going back to the first defect, and it being the opinion of the Senate that said plea is insufficient in law, and that said articles of impeachment are sufficient in law, it is therefore further ordered and adjudged that said plea be, and the same hereby is, overruled and held for naught, and said William W. Belknap is ordered to plead or answer to the merits within —— days;" which judgment thus pronounced shall be entered upon the journal of the Senate sitting as aforesaid. Amended and passed 75, 76
that the court take a recess 75
that the application of respondent for postponement of the time for proceeding with trial be overruled. Agreed to. 172
that the order of Mr. Sherman be amended by inserting after the word "be" and before the word "filed" the word "not." Rejected 172
that the motion of Mr. Morton limiting the time of discussion on the admissibility of testimony be amended by striking out "ten" and inserting "thirty," and adding "unless otherwise ordered." Original motion withdrawn .. 191
by Mr. Senator Whyte—
that the court take a recess 31, 55, 197
that the court shall proceed to vote, without further debate, on the question of jurisdiction raised by the pleadings in the pending case; and each Senator shall be permitted to file within two days his written opinion thereon, to be printed with the proceedings 73
that the court shall proceed on Saturday, the 27th of May, to vote upon the question of jurisdiction raised by the pleadings in the pending case, which vote shall be taken before the court shall adjourn on that day; and that each Senator shall be permitted to file within seven days thereafter his written opinion thereon, to be printed with the proceedings in the order in which they may have been delivered 75
that each Senator be permitted to file his opinion in writing upon the question of jurisdiction on or before the 1st day of July, 1876, to be printed with the proceedings in the order in which the same shall be delivered, and the opinions pronounced in the court shall be printed in the order in which they were so pronounced 77
that W. W. Belknap is hereby ordered to plead further or answer the articles of impeachment within ten days from this date. Debated, amended, and agreed to 158, 162, 163, 164, 165
that the court adjourn until to-morrow at one o'clock p. m., when argument shall be heard upon the motion offered by the counsel for the respondent. Rejected 164
that the court adjourn 272
by Mr. Senator Wright—
that the court adjourn 74, 161
that the court take a recess 334

N.

National Bank of Commerce of New York, the ledger and check-books of, and a transcript from them of C. P. Marsh's account 196, 197
NORWOOD, THOMAS M., a Senator from Georgia—
oath, the, administered to, by the Chief Justice 4
opinion on final judgment in the case 358
votes by, on the articles of impeachment 345, 348, 351, 354, 356

O.

Page.

Oaths, the, administered to the Senators by the Chief Justice..3, 4, 5
by the presiding officer.....7, 8, 72, 74
Oaths administered to witnesses by the Chief Clerk of the Senate..... 179
OGLESBY, RICHARD J., a Senator from Illinois—
oath, the, administered to, by the Chief Justice..... 4
incidental remarks by..... 295
interlocutory remarks by, on the evidence.....249, 252, 259
motions by—
that the motion of Mr. Morton fixing the date for a vote without further debate upon the pending and cognate questions be amended. Rejected..... 75
that the court adjourn..... 75
votes by, on the articles of impeachment.....345, 348, 351, 354, 356
Opinions, written—
on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment, by—
Mr. Senator Allison, of Iowa.....116–122
Bayard, of Delaware.....127–130
Bogy, of Missouri.....143, 144
Booth, of California.....144, 145
Boutwell, of Massachusetts.....130–133
Cameron, of Wisconsin.....126, 127
Christiancy, of Michigan.....100–106
Cooper, of Tennessee.....133, 134
Cragin, of New Hampshire.....154–158
Dawes, of Massachusetts.....147–153
Eaton, of Connecticut.....114–116
Edmunds, of Vermont.....88–91
Frelinghuysen, of New Jersey.....82–85
Howe, of Wisconsin.....97–100
Ingalls, of Kansas.....124–126
Jones, of Florida.....137–143
Kernan, of New York.....153, 154
Key, of Tennessee.....145–147
McDonald, of Indiana.....77, 78
McMillan, of Minnesota.....122–124
Maxey, of Texas.....91–93
Merrimon, of North Carolina.....96, 97
Mitchell, of Oregon.....108–112
Morrill, of Vermont.....112–113
Morton, of Indiana.....81, 82
Sargent, of California.....87, 88
Saulsbury, of Delaware.....134–137
Sherman, of Ohio.....86, 87
Thurman, of Ohio.....78–80
Wallace, of Pennsylvania.....80, 81
Whyte, of Maryland.....106, 107
Wright, of Iowa.....93–96
on final judgment in the case, by—
Mr. Senator Norwood, of Georgia.....358–360
Stevenson, of Kentucky.....360–364
Wadleigh, of New Hampshire.....364, 365
Wright, of Iowa.....365, 366
Order from the Secretary of War regulating post-traders..... 188

P.

Papers relating to the appointment of a post-trader at Fort Sill, and the management at that place.....200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 213
PADDOCK, ALGERNON S., a Senator from Nebraska—
oath, the, administered to, by the Chief Justice..... 4
incidental remarks by.....165, 319, 334
call for the yeas and nays..... 75
motions by—
to amend an order of Mr. Sherman, fixing the time of adjournment of the court to May 15, by inserting May 20. Rejected..... 72
to amend an order of Mr. Morton so that it will read: That the Senate sitting as a court of impeachment take a recess until 7.30 o'clock, that the vote upon the question of jurisdiction be taken at eleven o'clock this evening, and that Senators who may desire to file opinions in the case shall be permitted to do so before the 10th of June next. Rejected..... 75
to amend the first resolution of Mr. Thurman so that it will read: That William W. Belknap, late Secretary of War, having ceased to be a civil officer of the United States by reason of his resignation before proceedings in impeachment were commenced against him by the House of Representatives, the Senate cannot take jurisdiction in this case. Rejected..... 76
votes by, on the articles of impeachment.....345, 348, 351, 354, 356

Page.

PATTERSON, JOHN J., a Senator from South Carolina—
oath, the, administered to, by the presiding officer..... 7
incidental remarks by..... 237
votes by, on the articles of impeachment.....345, 348, 351, 354, 356
Pope, John, Major-General, a witness for the defense, evidence concerning post-tradership at Fort Sill, and official character of W. W. Belknap as Secretary of War..256, 257
Prosecution—
witnesses examined for the—
Adams, George M., identifies the articles of agreement between J. S. Evans and C. P. Marsh..... 181
Barnard, William H., concerning certain deposits made by W. W. Belknap in the First National Bank of Washington.....198, 199
Barnard, William T., evidence giving the movements of W. W. Belknap in June 1872, 1873, and 1874, and his having the charge of Belknap's private letters.....217, 218
Bartlett, Edward T., evidence showing how he drew up the articles of agreement between J. S. Evans and C. P. Marsh..... 181
Brinkerhoff, Henry S.—
identification of a paper in the office of the Adjutant-General of the Army..... 243
cross-examination by the counsel for the respondent..... 243
Clymer, Hiester—
evidence concerning the examination of W. W. Belknap before the Committee on Expenditures in the War Department of the House of Representatives.245–251, 254, 255
cross-examined by the counsel for respondent.....254, 255
Crosby, H. T.—
identifies express receipts for money sent by C. P. Marsh to W. W. Belknap.....183, 184
states that the private papers of W. W. Belknap were sent to him, including a letter from Marsh asking that the appointment as post trader at Fort Sill be made out in the name of Evans.....184, 185
identifies an article in the New York Tribune and an order issued in consequence.....185, 186, 187
questioned by Mr. Senator Sherman..... 186
recalled and examined by the counsel for the defense..... 262, 263, 264, 282, 283, 284, 285
cross-examined by the counsel for the prosecution..... 263, 264, 283, 284, 285
Dodge, Jonas S., shows the delivery by him, as delivery clerk of Adams Express Company, of packages of money sent from New York to W. W. Belknap..... 183
Emery, Charles F.—
stated the investment of certain funds for W. W. Belknap in a mortgage subsequently assigned to Mrs. Belknap or Mrs. Bower.....199, 200
cross-examined by the counsel for the respondent.....199, 200
questioned by Mr. Senator Wright..... 199
Evans, John S.—
return of the service of subpœna to, by Sergeant-at-Arms.. 227
statements concerning the summoning of, by the Sergeant-at-Arms.....271, 272
evidence of, concerning his connection with the post-tradership at Fort Sill.....273–275
cross-examined by the counsel for the defense.276–278, 279, 280
re-examined by the counsel for the prosecution.....280, 281
recross-examined by the counsel for the defense.....281, 282
questioned by—
Mr. Senator Sargent..... 275
Mr. Senator Randolph..... 275
Mr. Senator Conkling..... 276
Mr. Senator Wright..... 281
Fisher, John J.—
evidence concerning his connection with the post-tradership at Fort Sill.....252, 253
cross-examined by the counsel for the respondent..... 253
Hazen, William B., Major-General—
evidence concerning the post-tradership at Fort Sill, and his testimony, correspondence, and conversations relating thereto.....228–230, 243
cross-examined by counsel for the respondent..... 230, 231, 233, 234, 243–245
questioned by Mr. Senator Thurman..... 244
Kernan, Joseph A., states the accounts of C. P. Marsh in the National Bank of Commerce of New York and checks paid.....196, 197
King, Richard, identifies certificates of deposit in the National Bank of Commerce of New York, issued to C. P. Marsh, payable to W. W. Belknap..... 196
McDowell, Irvin, Major-General—
stated how he learned that there were abuses connected with the post-tradership at Fort Sill and what steps were taken by the Secretary of War at his suggestion to rectify them.....187–189

Page.

Prosecution, witnesses examined for the—*Continued.*
McDowell, Irvin, Major-General, cross-examination of, by the counsel for respondent 189–196
questioned by Mr. Senator Logan 188
Marsh, Caleb P.—
evidence showing his relations with W. W. Belknap and the post-tradership at Fort Sill 219–226, 228–236
cross-examined by counsel for the respondent 236, 237, 242, 243
re-examined by the counsel for the prosecution 237–242
questioned by—
Mr. Senator Logan 238, 239, 241, 242
Mr. Senator Dawes 239
Mr. Senator Howe 241
Mr. Senator Oglesby 243
Moody, William F.—
evidence concerning the shipments of money by Adams Express Company from New York to Washington 215
cross-examined by counsel for the respondent 215
Moss, George W., shows the transportation of different sums of money, at different times, by Adams Express Company, from C. P. Marsh at New York to W. W. Belknap at Washington 182, 183
Reid, Whitelaw, evidence concerning an article which appeared in the New York Tribune concerning the post-trader-ship at Fort Sill. Two questions were objected to by the counsel for respondent; one objection was sustained by the court, and the other was overruled 218, 219
Smalley, E. V., evidence concerning an article which appeared in the New York Tribune concerning the post-tradership at Fort Sill 215
Townsend, E. D., Adjutant-General—
presents the original papers relating to the appointment of a post-trader at Fort Sill and the management of that place, and testifies concerning them and his relations with the Secretary of War 200–209
cross-examined by respondent's counsel 209–214
re-examined by Mr. Manager McMahon 214
recross-examined by the respondent's counsel 214
recalled and examined for the defense 257, 278, 279
recalled and cross-examined by the prosecution 258
questioned by Mr. Senator Sargent 212
questioned by Mr. Senator Logan 213
Vilas, Charles M.—
states dates on which W. W. Belknap arrived at the Fifth Avenue Hotel, New York, and the time of his sojourn there 198
cross-examined by counsel for the respondent 198
questioned by Mr. Senator Wright 199
Whitney, Leonard, evidence concerning certain telegrams received at and sent from the Washington office of the Western Union Telegraph Company, of which he is manager 216, 217

R.

Randall, Samuel J., chairman of the Committee of the Whole House, attends 6
RANDOLPH, THEODORE F., a Senator from New Jersey—
oath, the, administered to, by the Chief Justice 4
incidental remarks by 182, 275, 276, 341
question by, to J. S. Evans, a witness for the defense: What amount of goods did you sell at Fort Sill during any one year pending this contract? 275, 276
votes by, on the articles of impeachment 345, 348, 351, 354, 356
RANSOM, MATT W., a Senator from North Carolina—
oath, the, administered to, by the Chief Justice 4
statement that he had been called away by sickness in his family, by his colleague, Mr. Merrimon 341
votes by, on the articles of impeachment 346, 348, 351, 354, 356
Real estate, investment by W. W. Belknap in 199
Recess of Congress, power of the Senate to sit during the, as a court of impeachment—
amendment of Mr. Senator Conkling denying the 173
amendment of Mr. Senator Frelinghuysen denying the 173
amendment of Mr. Senator Morton denying the 173
remarks of Mr. Manager Lord on the 171, 172
Reid, Whitelaw, a witness for the prosecution, evidence concerning an article which appeared in the New York Tribune concerning the post-tradership at Fort Sill. Two questions were objected to by the counsel for the respondent; one objection was sustained by the court, and the other was overruled 218, 219
Replication by the House to the plea of the respondent to the jurisdiction of the court 7
Report of the Committee on Military Affairs of the House of Representatives, Forty-second Congress. General Hazen's testimony objected to, and the objection sustained by the Senate 189

Page.

Resignation of W. W. Belknap as Secretary of War 247
Robbins, William M., a Representative from North Carolina, appointed a member of the impeachment committee of the House 1
ROBERTSON, THOMAS J., a Senator from South Carolina—
oath, the, administered to, by the Chief Justice 5
interlocutory remarks by, on the evidence 270, 288
motion by, that the court adjourn 269
votes by, on the articles of impeachment 346, 348, 351, 354, 356
Ruger, Thomas W., Colonel, a witness for the defense, evidence concerning the official reputation of W. W. Belknap 267

S.

SARGENT, AARON A., a Senator from California—
oath, the, administered to, by the Chief Justice 4
incidental remarks by 165, 166, 168, 169, 172, 189
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment 87, 88
motion by—
that the court return to the Senate Chamber 19
that Mr. Sherman's motion be amended by striking out the limit of the time of the discussion. Agreed to 27
that there be a call of the Senate. Agreed to 31
that Mr. Sherman's motion be amended by striking out Monday and inserting Saturday. Rejected 72
that the court adjourn 72, 73, 74
that the court take a recess 73, 187
that the court will proceed to hear the evidence on the 6th of July. Amended and agreed to 165, 166, 167
that the managers and the counsel for the respondent furnish to each other lists of the witnesses that they intend to summon. Amended and agreed to 168, 169
that the motion of Mr. Edmunds concerning the final vote be amended 342
point of order by, that Senators must reduce questions to writing 24
question by—
to Mr. Blair, asking whether the resolution in Barnard's case, to which he referred, was adopted 29
to Mr. Manager Hoar, asking whether members of the present Senate who have been in past years civil officers of the United States are now liable to be impeached for an alleged act of guilt done in office 60
to Mr. Manager Hoar, (after an affirmative response to the preceding question:) Then what becomes of the comity between the two Houses on which the learned manager laid stress? 61
to the managers: whether there was objection to having the existence of a letter in the files of War Department proven before a vote on admission of that document 212
to the managers: whether the witness Evans should not state fully his conversations with Marsh 275
to J. S. Evans, a witness for the prosecution: whether Marsh told him, in any of those conversations, what he was going to do with the money received from him 275
votes by, on the articles of impeachment 346, 348, 351, 354, 356
SAULSBURY, ELI, a Senator from Delaware—
oath, the, administered to, by the Chief Justice 4
incidental remarks by 165
motion by, to amend the amendment by Mr. Morton to the motion of Mr. Sherman by adding after the words "House of Representatives" the words "or its managers" 173
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment 134–137
votes by, on the articles of impeachment 346, 348, 351, 354, 357
Secretary of the Senate, the—
journal of the court read by 6, 7, 8, 15, 21, 27, 37, 47, 64, 158, 162, 171, 174, 189, 202, 236, 252, 272, 298, 299, 318, 341
articles of impeachment read by 343, 346, 349, 351, 354
papers and authorities read by 6, 7, 8, 9, 15, 27, 42, 273, 298
Sergeant-at-Arms of the Senate, the—
announcement by, of the House impeachment committee 1
of the managers 1, 6, 7, 8, 15, 21, 27, 64
oath administered to, by the Chief Justice 6
proclamations by 2, 5, 6, 8, 15, 21, 37, 64, 73, 74, 75, 158, 162, 169, 174, 189, 218, 236, 252, 270, 271, 272
return of, on writs of summons 6, 227
communications from, relating to the summoning of John S. Evans 271, 272
SHARON, WILLIAM, a Senator from Nevada, oath, the, administered to, by the Chief Justice 4

Page.

Sheridan, P. H., Lieutenant-General, a witness for the defense—
dispatch from, asking to be relieved from personal attendance, read, and admissions of what he would testify as to certain matters placed on record, subject to objection ... 219
part of a letter from, admitted as evidence ... 257
SHERMAN, JOHN, a Senator from Ohio—
oath, the, administered to, by the Chief Justice ... 4
incidental remarks by ... 15, 63, 165, 172, 181, 189, 272, 286
interlocutory remarks by, on the evidence ... 226, 256, 261, 269
remarks by, on a question of adjournment ... 4, 5
call for the ayes and noes ... 171
motion by—
that for Mr. Edmunds's motion that the motion of the respondent for postponement be denied, be substituted that the managers be asked if they wish to be heard on this question of postponement. Rejected ... 14, 15
that the court adjourn until May 15, and that the argument of the question of jurisdiction be confined to eight hours on each side. Amended and agreed to ... 27
that the court adjourn until May 15, and that the argument of the question of jurisdiction be confined to nine hours on each side. Rejected ... 28
that Mr. Alcorn be excused from voting for the reasons stated by him. Agreed to ... 73
to postpone the pending and all prior orders and proceed to the consideration of the order submitted by Mr. Whyte fixing the time at which the vote on the question of jurisdiction shall be taken ... 74
that the court adjourn ... 63, 72, 75, 168, 189, 272, 298, 318
to amend the motion of Mr. Whyte so that it will read: That this court adjourn until Tuesday next, and in the mean time the defendant have leave to plead, answer, or demur herein ... 162
that the galleries be cleared ... 172
that the further reading of the journal be dispensed with ... 218, 270, 298
that the court take a recess ... 319
that the motion of Mr. Edmunds concerning the final vote be amended ... 341
objection by, to further discussion of question of jurisdiction ... 175
to the introduction of certain testimony ... 187
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment ... 86, 87
question by—
to the managers and to the counsel, as to the limit and the allotment of time for arguments ... 25
to Manager Jenks, requesting him to read the finding in the Blount case ... 55
to H. T. Crosby, a witness for the prosecution ... 186
to the presiding officer, whether telegrams called for must not be designated ... 216
votes by, on the articles of impeachment ... 346, 348, 351, 354, 357
Sherman, W. T., General, dispatch to the Sergeant-at-Arms relative to the attendance of Lieutenant-General Sheridan as a witness ... 219
Shiloh, battle of, allusion by Mr. Carpenter to General Belknap at the ... 13
Smalley, E. V., a witness for the prosecution, evidence concerning an article which appeared in the New York Tribune concerning the post-tradership at Fort Sill ... 215
SPENCER, GEORGE E., a Senator from Alabama—
oath, the, administered to, by the Chief Justice ... 5
votes by, on the articles of impeachment ... 346, 348, 351, 354, 357
STEVENSON, JOHN W., a Senator from Kentucky—
appointed on a select committee on impeachment ... 1
oath, the, administered to, by the Chief Justice ... 4
incidental remarks by ... 314, 341
interlocutory remarks by, on the evidence ... 227
remarks by, on the period of time fixed for the appearance of William W. Belknap ... 4
opinion by—
on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment. [Not furnished for publication.]
on the final judgment in the case ... 360–364
votes by, on the articles of impeachment ... 346, 348, 351, 354, 357
Swartwout, Samuel, allusion to the case of, by Judge Black ... 13

T.

Telegrams sent by W. W. Belknap to C. P. Marsh ... 217
Testimony of Caleb P. Marsh before the Committee on Expenditures in the War Department of the House of Representatives ... 250, 251, 253

Page.

THURMAN, ALLEN G., a Senator from Ohio—
appointed on a select committee on impeachment ... 1
on the committee to wait on the Chief Justice ... 3
oath, the, administered to, by the Chief Justice ... 4
call by, for the yeas and nays ... 173, 241
incidental remarks by ... 4, 19, 27, 42, 68, 70, 160, 161, 164, 165, 172, 173, 236
interlocutory remarks by, on the evidence ... 238, 241, 242, 244, 252
motions by—
that the court adjourn ... 19, 27, 236, 271, 319
that there be a call of the Senate sitting as a court ... 47
that in the opinion of the Senate William W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office. Amended and passed ... 76
that the House of Representatives and the respondent be notified that on the — day of ——, at twelve o'clock meridian, the Senate will deliver its judgment in open Senate on the question of jurisdiction raised by the pleadings, at which time the managers on the part of the House and the respondent are notified to attend. Amended and passed ... 75, 76
that at the time specified in the foregoing resolution the President of the Senate shall pronounce the judgment of the Senate as follows: "It is ordered by the Senate sitting for the trial of the articles of impeachment preferred by the House of Representatives against William W. Belknap, late Secretary of War, that the demurrer of said William W. Belknap to the replication of the House of Representatives to the plea to the jurisdiction filed by said Belknap be, and the same hereby is, overruled; and, going back to the first defect, and it being the opinion of the Senate that said plea is insufficient in law, and that said articles of impeachment are sufficient in law, it is therefore further ordered and adjudged that said plea be, and the same hereby is, overruled and held for naught, and said William W. Belknap is ordered to plead or answer to the merits within —— days;" which judgment thus pronounced shall be entered upon the journal of the Senate sitting as aforesaid. Amended and passed ... 75, 76
that the court take a recess ... 75
that the application of the respondent for postponement of the time for proceeding with trial be overruled. Agreed to ... 172
that the order of Mr. Sherman be amended by inserting after the word "be" and before the word "filed" the word "not." Rejected ... 172
that the motion of Mr. Morton limiting the time of discussion on the admissibility of testimony be amended by striking out "ten" and inserting "thirty," and adding "unless otherwise ordered." Original motion withdrawn ... 191
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment ... 78—80
question by—
to the counsel for the respondent, whether the remarks he had read from the debates in the constitutional convention related exclusively to the question whether the Chief Executive officer should be unaccountable as in Great Britain, or should be responsible ... 43
to the President *pro tempore*, whether there is to be an unlimited discussion of counsel and managers on every order that is offered by a Senator ... 160
to the counsel for the respondent, whether there is any precedent for an order asked for, (that the managers furnish them a list of their witnesses,) either in impeachment trials or in ordinary courts of criminal jurisdiction ... 167
to the counsel for the respondent, whether he objects to a question being answered or whether he wants it answered ... 239
to Mr. Black, counsel for the respondent: If it requires two-thirds of the Senators present to overrule the respondent's plea to the jurisdiction, does it not follow that two-thirds are necessary to overrule any objections to testimony made by the respondent or to sustain an objection to testimony made by the managers? ... 315
votes by, on the articles of impeachment ... 346, 348, 351, 354, 357
Tomlinson, Dr., testimony of Marsh concerning ... 251
Townsend, E. D., Adjutant-General, a witness for prosecution—
presents the original papers relating to the appointment of a post-trader at Fort Sill, and the management of that place, and testifies concerning them and his relations with the Secretary of War ... 200–209
cross-examined by respondent's counsel ... 209–214

Page.

Townsend, E. D., witness for prosecution—*Continued.*
re-examined by the managers 214
recross-examined by the respondent's counsel 214
recalled and examined for the defense 257, 278, 279
cross-examined by the prosecution 258
questioned by Mr. Senator Sargent 212
questioned by Mr. Senator Logan 213
Tribune, New York, article in the, on post-traders 185

V.

Vilas, Charles N., a witness for the prosecution—
states dates on which W. W. Belknap arrived at the Fifth Avenue Hotel, New York, and the time of his sojourn there 198
cross-examined by counsel for the respondent 198

W.

WADLEIGH, BAINBRIDGE, a Senator from New Hampshire—
oath, the, administered to, by the presiding officer 8
opinion of, on final judgment in the case 364, 365
votes by, on the articles of impeachment 346, 348, 351, 354, 357
Waite, Morrison R., Chief Justice of the United States, administered the oath to the Senators 3, 4, 5
WALLACE, WILLIAM A., a Senator from Pennsylvania—
oath, the, administered to, by the Chief Justice 4
interlocutory remarks by 233
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment 80, 81
question by, to the counsel for the respondent, concerning the examination of a witness 232
votes by, on the articles of impeachment 346, 348, 351, 354, 357
Way-bills of Adams Express Company, showing shipments of money from Washington to New York 215
WEST, J. R., a Senator from Louisiana—
oath, the, administered to, by the Chief Justice 4
votes by, on the articles of impeachment 346, 349, 351, 354, 357
West Point Academy, allusion to, by Mr. Hoar 57
Whitney, Leonard, a witness for the prosecution, evidence concerning certain telegrams received at and sent from the Washington office of the Western Union Telegraph Company, of which he is manager 216, 217
WHYTE, WILLIAM PINKNEY, a Senator from Maryland—
oath, the, administered to, by the Chief Justice 4
incidental remarks by 166, 169, 171
remarks by, on the adoption of rules of procedure in cases of impeachment 5
motion by—
that the court take a recess 31, 55, 197
that the court shall proceed to vote, without further debate, on the question of jurisdiction raised by the pleadings in the pending case; and each Senator shall be permitted to file within two days his written opinion thereon, to be printed with the proceedings 73
that the court shall proceed on Saturday, the 27th of May, to vote upon the question of jurisdiction raised by the pleadings in the pending case, which vote shall be taken before the court shall adjourn on that day; and that each Senator shall be permitted to file within seven days thereafter his written opinion thereon, to be printed with the proceedings in the order in which they may have been delivered 75
that each Senator be permitted to file his opinion in writing upon the question of jurisdiction in this case on or before the 1st day of July, 1876, to be printed with the proceedings in the order in which the same shall be delivered, and the opinions pronounced in the court shall be printed in the order in which they were so pronounced 77
that W. W. Belknap is hereby ordered to plead further or answer the articles of impeachment within ten days from this date. Debated, amended, and agreed to 158, 162, 163, 164, 165
that the court adjourn until to-morrow at one o'clock p. m., when argument shall be heard upon the motion offered by the counsel for the respondent. Rejected 164
that the court adjourn 272
opinion by, on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment 106, 107
question by—
to C. P. Marsh, a witness for the prosecution: When you paid to General Belknap money in person did you have any conversation with him about the source whence the money came or in any way regarding it? 242

Page.

WHYTE, WILLIAM PINKNEY—question by—*Continued.*
to the counsel for the respondent: Do the counsel for the respondent decline to state for the information of the Senate what they expect to prove by the absent witness, John S. Evans? 271
votes by, on the articles of impeachment 346, 349, 351, 354, 357
WINDOM, WILLIAM, a Senator from Minnesota—
oath, the, administered to, by the Chief Justice 4
incidental remarks by 236, 282
votes by, on the articles of impeachment 346, 349, 351, 354, 357
Wilson, Henry, the late, denial of a statement of counsel concerning, by Mr. Senator Boutwell 357
WITHERS, ROBERT E., a Senator from Virginia—
oath, the, administered to, by the Chief Justice 4
incidental remarks by 165
votes by, on the articles of impeachment 346, 349, 351, 354, 357
WRIGHT, GEORGE G., a Senator from Iowa—
oath, the, administered to, by the Chief Justice 4
incidental remarks by 3, 162, 164, 166
opinion by—
on the question whether the respondent is liable to be impeached by the House of Representatives, and tried by the Senate on impeachment for acts done by him as Secretary of War, notwithstanding his resignation before impeachment 93–96
on final judgment in the case 365
motion by—
that the court adjourn 74, 161
that the court take a recess 334
question by—
to the President *pro tempore*, whether it would be in order now to move to adjourn to a day certain, or whether the order should be properly that when the Senate sitting as a court of impeachment adjourns it be to a definite time 161
to Charles F. Emery, a witness for the prosecution 199
to the counsel for the respondent, whether time might not be saved by dispensing with the reading of certain papers 206
to C. P. Marsh, a witness for the prosecution: You said on yesterday that you presumed that General Belknap knew from whom the money sent him was received. Now state what led you to presume, or upon what you based this presumption 241
to the managers: Do I understand that the managers propose to introduce this testimony and follow it by the single proposition that thereupon the Secretary of War resigned, and thereby ask the Senate to draw a conclusion, or that there was anything said by him or done by him other than the mere resignation? 246
to J. S. Evans, a witness for the prosecution: When you left the Secretary of War, after you met him at his house, and just before you made the contract with Marsh, it was understood that Marsh had been promised or had received the appointment. Then you say you arranged with Marsh that you were to receive the appointment. Now, was it understood between you and Marsh that he was to advise the Secretary of the change? If not, how was the Secretary of War advised of this change; and did you have anything to do with letting him know of such change? 281, 282
testimony of, for the defense 267
votes by, on the articles of impeachment 346, 349, 351, 354, 357
evidence concerning the reputation of William W. Belknap in Iowa 267
cross-examined by the counsel for the prosecution 267

Y.

Yeas and nays on the roll-calls of the Senate—
on adjournment until April 17, 1876 5
on retiring for deliberation 14
on Mr. Merrimon's motion that the Senate return to its Chamber 14
on Mr. Sherman's amendment that the managers be asked if they desired to be heard on the respondent's motion to postpone until December 15
on Mr. Edmunds's motion to deny the request of the respondent for postponement 15
on Mr. Howe's motion to fix the 8th of May for the hearing 19
on Mr. Howe's motion to adjourn 21
on Mr. Edmunds's motion that the court retire for consultation 26
on Mr. McDonald's motion to reconsider the motion fixing the order of discussion of the jurisdictional question 27
on Mr. Sherman's motion that the court adjourn until May 15, and that the arguments of the question of jurisdiction be confined to eight hours on each side 27
on Mr. Sherman's motion that the court adjourn until May 15, and that the arguments of the question of jurisdiction be confined to nine hours on each side 28

Page.
Yeas and nays on the roll-calls of the Senate—*Continued.*
on Mr. Ingalls's motion that the court adjourn 75
on Mr. Edmunds's motion amending the motion of Mr. Morton so as to read, "that the court proceed on Monday next to vote upon the pending and cognate questions" 75
on Mr. Paddock's motion amending the motion of Mr. Morton so as to read, "that the court take a recess; that the vote upon the question of jurisdiction be taken to-night at eleven o'clock, and that opinions may be subsequently filed" 75
on Mr. Morton's motion to lay his motion, as amended, on the table 75
on Mr. Wright's motion to lay on the table the motion of Mr. Morton declaring that the power of impeachment does not extend to a person no longer in office charged with crimes committed while he was in office 76
on Mr. Paddock's motion substituting for Mr. Thurman's resolutions a resolution declaring that the Senate cannot take jurisdiction in the case of W. W. Belknap 76
on Mr. Thurman's resolutions, first, second, and third 76
on Mr. Hitchcock's motion to adjourn until Wednesday, May 31. 76
on Mr. Whyte's motion that the court adjourn until Wednesday, June 7 164
on Mr. Thurman's amendment to Mr. Whyte's motion 165
on Mr. Whyte's motion, amended, that the respondent have leave to plead within ten days from June 6 165
on Mr. Cockrell's amendment fixing time for trial at June 19.. 167
on Mr. Edmunds's amendment fixing time for trial at July 6.. 167
on Mr. Edmunds's motion to adjourn until June 19 171
on Mr. Howe's motion to reconsider the vote by which the galleries were cleared 172
on Mr. Thurman's amendment to Mr. Sherman's resolution 172
on the first clause of Mr. Sherman's order 172

Page.
Yeas and nays on the roll-calls of the Senate—*Continued.*
on Mr. Allison's amendment to the second clause of Mr. Sherman's order 173
on Mr. Conkling's amendment to the second clause of Mr. Sherman's order 173
on Mr. Thurman's motion to lay on the table the second clause of Mr. Sherman's order 173
on Mr. Saulsbury's amendment to the second clause of Mr. Sherman's order 173
on the second clause of Mr. Sherman's order 173
on receiving the printed report of General Hazen's testimony as evidence 189
on admitting an interrogatory proposed to General McDowell. 192
on admitting a letter written by George T. Robinson 213
on a motion to adjourn 236
on putting the question asked C. P. Marsh, a witness, by Mr. Logan 242
on the admission of the testimony of C. P. Marsh before a committee of the House 249
on sustaining the decision of the Chair 259
on putting the question asked J. S. Evans, a witness, by the counsel for the respondent 280
on postponing the trial because of the illness of counsel 298
on a motion to adjourn 319
on Mr. Hamlin's motion that all proceedings be in open session. 341
on Mr. Edmunds's motion that the doors be closed for deliberation 341
on Mr. Ingalls's amendment to Mr. Edmunds's motion on the final order 342
on sustaining a decision by the Chair 342
on Mr. Ingalls's amendment to Mr. Edmunds's motion on the rules 342
on the articles of impeachment ["guilty" or "not guilty?"].343–357

VOTES IN THE UNITED STATES SENATE, SITTING AS A COURT OF IMPEACHMENT,

AUGUST 1, 1876.

Names of Senators.	First article.	Second article.	Third article.	Fourth article.	Fifth article.
Mr. Allison, of Iowa	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Anthony, of Rhode Island	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Bayard, of Delaware	Guilty	Guilty	Guilty	Guilty	Guilty.
Booth, of California	Guilty	Guilty	Guilty	Guilty	Guilty.
Boutwell, of Massachusetts	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Bruce, of Mississippi	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Cameron, of Pennsylvania	Guilty	Guilty	Guilty	Guilty	Guilty.
Cameron, of Wisconsin	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Christiancy, of Michigan	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Cockrell, of Missouri	Guilty	Guilty	Guilty	Guilty	Guilty.
Conkling, of New York	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Conover, of Florida	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Cooper, of Tennessee	Guilty	Guilty	Guilty	Guilty	Guilty.
Cragin, of New Hampshire	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Davis, of West Virginia	Guilty	Guilty	Guilty	Guilty	Guilty.
Dawes, of Massachusetts	Guilty	Guilty	Guilty	Guilty	Guilty.
Dennis, of Maryland	Guilty	Guilty	Guilty	Guilty	Guilty.
Dorsey, of Arkansas	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Eaton, of Connecticut	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Edmunds, of Vermont	Guilty	Guilty	Guilty	Guilty	Guilty.
Ferry, of Michigan	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Frelinghuysen, of New Jersey	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Gordon, of Georgia	Guilty	Guilty	Guilty	Guilty	Guilty.
Hamilton, of Texas	Guilty	Guilty	Guilty	Guilty	Guilty.
Hamlin, of Maine	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Harvey, of Kansas	Guilty	Guilty	Guilty	Guilty	Guilty.
Hitchcock, of Nebraska	Guilty	Guilty	Guilty	Guilty	Guilty.
Howe, of Wisconsin	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Ingalls, of Kansas	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Jones, of Nevada	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Kelly, of Oregon	Guilty	Guilty	Guilty	Guilty	Guilty.
Kernan, of New York	Guilty	Guilty	Guilty	Guilty	Guilty.
Key, of Tennessee	Guilty	Guilty	Guilty	Guilty	Guilty.
Logan, of Illinois	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
McCreery, of Kentucky	Guilty	Guilty	Guilty	Guilty	Guilty.
McDonald, of Indiana	Guilty	Guilty	Guilty	Guilty	Guilty.
McMillan, of Minnesota	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Maxey, of Texas	.....	Guilty	Guilty	Guilty	Guilty.
Merrimon, of North Carolina	Guilty	Guilty	Guilty	Guilty	Guilty.
Mitchell, of Oregon	Guilty	Guilty	Guilty	Guilty	Guilty.
Morrill, of Vermont	Guilty	Guilty	Guilty	Guilty	Guilty.
Morton, of Indiana	.....	.....	.....	.....	Guilty.
Norwood, of Georgia	Guilty	Guilty	Guilty	Guilty	Guilty.
Oglesby, of Illinois	Guilty	Guilty	Guilty	Guilty	Guilty.
Paddock, of Nebraska	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Patterson, of South Carolina	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Randolph, of New Jersey	Guilty	Guilty	Guilty	Guilty	Guilty.
Ransom, of North Carolina	Guilty	Guilty	Guilty	Guilty	Guilty.
Robertson, of South Carolina	Guilty	Guilty	Guilty	Guilty	Guilty.
Sargent, of California	Guilty	Guilty	Guilty	Guilty	Guilty.
Saulsbury, of Delaware	Guilty	Guilty	Guilty	Guilty	Guilty.
Sherman, of Ohio	Guilty	Guilty	Guilty	Guilty	Guilty.
Spencer, of Alabama	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Stevenson, of Kentucky	Guilty	Guilty	Guilty	Guilty	Guilty.
Thurman, of Ohio	Guilty	Guilty	Guilty	Guilty	Guilty.
Wadleigh, of New Hampshire	Guilty	Guilty	Guilty	Guilty	Guilty.
Wallace, of Pennsylvania	Guilty	Guilty	Guilty	Guilty	Guilty.
West, of Louisiana	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Whyte, of Maryland	Guilty	Guilty	Guilty	Guilty	Guilty.
Windom, of Minnesota	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
Withers, of Virginia	Guilty	Guilty	Guilty	Guilty	Guilty.
Wright, of Iowa	Not guilty	Not guilty	Not guilty	Not guilty	Not guilty.
	Guilty 35	Guilty 36	Guilty 36	Guilty 36	Guilty 37
	Not guilty...25	Not guilty...25	Not guilty...25	Not guilty...25	Not guilty.25

Sixty-two Senators voting; forty-two necessary for conviction.

CONGRESSIONAL RECORD;

13443

CONTAINING THE

PROCEEDINGS OF THE SENATE

SITTING FOR THE

TRIAL OF WILLIAM W. BELKNAP,

LATE SECRETARY OF WAR,

ON THE

ARTICLES OF IMPEACHMENT EXHIBITED BY THE HOUSE OF REPRESENTATIVES.

FORTY-FOURTH CONGRESS, FIRST SESSION.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1876.

PROCEEDINGS OF THE HOUSE OF REPRESENTATIVES

RELATING TO THE

IMPEACHMENT OF WM. W. BELKNAP,

LATE SECRETARY OF WAR.

THURSDAY, *March* 2, 1876.

Mr. CLYMER, of Pennsylvania, chairman of the Committee on Expenditures in the War Department, submitted to the House the following report:

The Committee on Expenditures in the War Department would respectfully report:

That they found at the very threshold of their investigation such unquestioned evidence of the malfeasance in office by General William W. Belknap, then Secretary of War, that they find it to be their duty to lay the same before the House.

They further report that this day at eleven o'clock a. m. a letter of the President of the United States was presented to the committee accepting the resignation of the Secretary of War, which is hereto attached, together with a copy of his letter of resignation, which the President informs the committee was accepted about ten o'clock and twenty minutes this morning. They therefore unanimously report and demand that the said William W. Belknap, late Secretary of War, be dealt with according to the laws of the land, and to that end submit herewith the testimony in the case taken, together with the several statements and exhibits thereto attached, and also a rescript of the proceedings of the committee had during the investigation of this subject. And they submit the following resolutions, which they recommend shall be adopted:

Resolved, That William W. Belknap, late Secretary of War, be impeached of high crimes and misdemeanors while in office.

Resolved, That the testimony in the case of William W. Belknap, late Secretary of War, be referred to the Committee on the Judiciary, with instructions to prepare and report without unnecessary delay suitable articles of impeachment of said William W. Belknap, late Secretary of War.

Resolved, That a committee of five members of this House be appointed and instructed to proceed immediately to the bar of the Senate, and there impeach William W. Belknap, late Secretary of War, in the name of the House of Representatives and of all the people of the United States of America, of high crimes and misdemeanors while in office, and to inform that body that formal articles of impeachment will in due time be presented, and to request the Senate to take such order in the premises as they deem appropriate.

Mr. CLYMER read the evidence and the accompanying papers, exhibits, and statements in the case. He then demanded the previous question upon the adoption of the resolutions.

After an hour's debate, in which Mr. ROBBINS of North Carolina, Mr. BASS of New York, Mr. HOAR of Massachusetts, Mr. BLACKBURN of Kentucky, Mr. DANFORD of Ohio, and Mr. KASSON of Iowa participated, the resolutions were unanimously adopted.

The Speaker appointed as the committee called for in the second resolution, Mr. CLYMER, Mr. ROBBINS of North Carolina, Mr. BLACKBURN, Mr. BASS, and Mr. DANFORD.

TUESDAY, *March* 7, 1876.

Mr. CLYMER rose to a question of privilege. The evening previous, he stated, a subpœna, issued by the supreme court of the District of Columbia holding a criminal court for this District, was served upon him, and he believed upon the other gentlemen who are members of the Committee on Expenditures in the War Department. The one served upon him was a *duces tecum*, commanding him to bring with him certain papers and to testify with relation to charges pending in that court against the late Secretary of War.

Mr. CLYMER proceeded to state that that morning, accompanied by the gentleman from North Carolina [Mr. ROBBINS] and the gentleman from Kentucky, [Mr. BLACKBURN,] he appeared before that court, and, by the permission of the president judge, he made, on behalf of himself and the committee, a statement. He said that in obedience to the law they appeared at the bar to obey any order the court might make; that as a member of the committee of the House he felt that it would be prejudicial to the best interests of the country to compel them to state what had transpired in the room of the committee of which they were members; that he believed that it would not only close the mouths of all witnesses, but would in many cases drive them from the land. He said furthermore that, while not pleading their privileges as members of this House, as they might have done, they yet protested against being examined; and that they would only consent to be so examined after an order made specially to that end by the court. The court was kind enough to take time for deliberation, and determined that if it needed them hereafter it would send for them. He concluded by asking that the House would take such action upon the question as it might deem necessary, right, and just.

After discussion, the following preamble and resolutions, offered by Mr. LAMAR, of Mississippi, were adopted by a vote of 132 ayes against 75 nays, 82 members of the House not voting:

Whereas the Speaker of this House did, on the 20th of December, 1875, appoint the following Committee on Expenditures in the War Department, to wit: HIESTER CLYMER, WILLIAM M. ROBBINS, JOSEPH C. S. BLACKBURN, LYMAN K. BASS, LORENZO DANFORD; and whereas thereafter, on the 14th of January, 1876, this House adopted the following resolution:

"*Resolved*, That the several committees of this House having in charge matters pertaining to appropriations, foreign affairs, Indian affairs, military affairs, naval affairs, post-office and post-roads, public lands, public buildings and grounds, claims, and war claims be, and they are hereby, instructed to inquire, so far as the same may properly be before their respective committees, into any errors, abuses or frauds that may exist in the administration and execution of existing laws affecting said branches of the public service, with a view to ascertain what change and reformation can be made so as to promote integrity, economy, and efficiency therein; that the Committees on Expenditures in the State Department, in the Treasury Department, in the War Department, in the Navy Department, in the Post-Office Department, in the Interior Department, in the Department of Justice, and on Public Buildings, be, and they are hereby, instructed to proceed at once, as required by the rules of the House, to examine into the state of the accounts and expenditures of the respective Departments submitted to them, and to examine and report particularly whether the expenditures of the respective Departments are justified by law; whether the claims from time to time satisfied and discharged by the respective Departments are supported by sufficient vouchers, establishing their justness both as to their character and amount; whether such claims have been discharged out of funds appropriated therefor, and whether all moneys have been disbursed in conformity with appropriation laws; whether any, and what, provisions are necessary to be adopted to provide more perfectly for the proper application of the public moneys and to secure the Government from demands unjust in their character or extravagant in their amount; whether any, and what, retrenchment can be made in the expenditures of the several Departments, without detriment to the public service; whether any, and what, abuses at any time exist in the failure to enforce the payment of moneys which may be due to the United States from public defaulters or others, and to report from time to time such provisions and arrangements as may be necessary to add to the economy of the several Departments and the accountability of their officers; whether any offices belonging to the branches or Departments, respectively, concerning whose expenditures it is their duty to inquire, have become useless or unnecessary; and to report from time to time on the expediency of modifying or abolishing the same; also to examine into the pay and emoluments of all officers under the laws of the United States and to report from time to time such a reduction or increase thereof as a just economy and the public service may require. And for the purpose of enabling the several committees to fully comprehend the workings of the various branches or Departments of Government, respectively, the investigations of said committees may cover such period in the past as each of said committees may deem necessary for its own guidance or information or for the protection of the public interests, in the exposing of frauds or abuses of any kind that may exist in said Departments; and said committees are authorized to send for persons and papers, and may report by bill or otherwise.

"*Resolved further*, That the Committee on Public Expenditures be instructed to investigate and inquire into all matters set forth in the foregoing resolutions in the legislative departments of the Government, except in so far as the Senate is exclusively concerned, particularly in reference to the public printing and binding, and shall have the same authority that is conferred upon the other committees aforesaid."

And whereas in the discharge of the duties imposed by said order the said Committee on Expenditures in the War Department did enter upon an examination into the said accounts of said Department and into the administration thereof, and did send for persons and papers to investigate certain acts of William W. Belknap, late Secretary of War, on which being reported to this House by said committee it has taken action to impeach the said William W. Belknap of high crimes and misdemeanors; and whereas the supreme court of the District of Columbia, by process bearing date March 6, 1876, has commanded HIESTER CLYMER to "bring all papers, documents, records, checks, and contracts in your possession, or in the possession of the Committee of the House of Representatives on Expenditures in the War Department, in relation to the charge against said defendant of accepting a bribe or bribes while Secretary of War of the United States, and to attend the said court immediately to testify on behalf of the United States, and not depart from the court without leave of the court or district attorneys:" and whereas the mandate of said court is a breach of the privileges of this House:

Resolved, That the said committee and the members thereof are hereby directed to disregard said mandate until the further order of this House.

WEDNESDAY, *March* 8, 1876.

Mr. KNOTT, of Kentucky, chairman of the Committee on the Judiciary, to whom was refered the resolution of the House directing them to prepare suitable articles of impeachment against William W. Belknap, late Secretary of War, submitted the following report, accompanied by a resolution, which was adopted without a division:

The Committee on the Judiciary would respectfully report that, in pursuance of the instrucions of the House, they have prepared articles of impeachment against William W. Belknap, late Secretary of War, for high crimes and misdemeanors in office, but that, since preparing the same, they have been informed and believe that Caleb P. Marsh, upon whose testimony before the Committee on Expenditures in the War Department, and referred to them by the House, said articles were framed, has gone beyond the jurisdiction of the Government of the United States, and that probably his attendance as a witness before the Senate sitting as a court of impeachment cannot be procured; and that they are also informed and believe that other evidence may be procured sufficient to convict said William W. Belknap of high crimes and misdemeanors in office as Secretary of War. They therefore recommend the adoption of the following resolution:

Resolved, That the resolution instructing the Committee on the Judiciary to prepare articles of impeachment against William W. Belknap, late Secretary of War, for high crimes and misdemeanors in office, be recommitted to said committee with power to take further proof, to send for persons and papers, to sit during the sessions of the House, and to report at any time.

Your committee, impressed with the importance of securing the fullest indemnity to such witnesses as may be required to testify in behalf of the Government before either House of Congress, or any committee of either House, or before the Senate sitting as a court of impeachment, would also recommend the immediate passage of the accompanying bill, entitled "A bill to protect witnesses who shall be required to testify in certain cases." They would further recommend that the accompanying bill, entitled "A bill in relation to witnesses," be introduced, printed, and referred to the Committee on the Judiciary, with leave to report thereon at any time.

Mr. KNOTT also reported from the Committee on the Judiciary the following bill; which was discussed and passed by a vote of 206 yeas against 80 nays, 82 members of the House not voting:

A bill (H. R. No. 2572) to protect witnesses who shall be required to testify in certain cases.

Be it enacted, &c., That whenever any person shall be required to testify against his protest before either House of Congress or any committee thereof, or the Senate sitting as a court of impeachment, and shall so testify under protest, he shall not thereafter be held to answer criminally in any court of justice, or subject to any penalty or forfeiture, on account of any fact or act concerning which he shall be so required to testify: *Provided*, That nothing herein contained shall be so construed as to relieve any person from liability to impeachment.

THURSDAY, *March* 30, 1876.

Mr. KNOTT rose, he said, to make a privileged report. The Committee on the Judiciary, having had under consideration the resolution of the House directing them to prepare and report articles in support of the impeachment of William W. Belknap, late Secretary of War, for high crimes and misdemeanors in office, had directed him to report such articles and an accompanying resolution for the action of the House. He asked that the report be printed and recommitted, and he gave notice that he should call it up for action at a convenient hour on the day after the next. He presumed it would be unnecessary to occupy the time of the House in reading those lengthy articles. He moved that they be printed for the use of the House and recommitted to the committee.

The motion was agreed to.

The report was as follows:

The Committee on the Judiciary, having had under consideration the resolution of the House directing them to prepare and report articles in support of the impeachment of William W. Belknap, late Secretary of War, for high crimes and misdemeanors in office, respectfully report the following articles and accompanying resolutions for the action of the House:

Resolved, That the following articles be adopted and presented to the Senate, in maintenance and support of the impeachment for high crimes and misdemeanors in office of William W. Belknap, late Secretary of War:

Articles exhibited by the House of Representatives of the United States of America, in the names of themselves and of all the people of the United States of America, against William W. Belknap, late Secretary of War, in maintenance and support of their impeachment against him for high crimes and misdemeanors while in said office.

[These articles will be found on pages 2 and 3.]

Resolved, That seven managers be appointed by ballot to conduct the impeachment exhibited against William W. Belknap, late Secretary of War of the United States.

SATURDAY, *April* 1, 1876.

Mr. HUNTON, of Virginia, a member of the Committee on the Judiciary, stated that the chairman of that committee, [Mr. KNOTT,] who was unavoidably detained from the House that day on the business of the House, had requested him to give notice he will call up the articles of impeachment of the late Secretary of War on Monday next immediately after the morning hour.

MONDAY, *April* 3, 1876.

Mr. KNOTT called up the resolutions which he had reported on the 30th ultimo from the Committee on the Judiciary, and the first one, with the accompanying articles and specifications, was adopted without debate and without a division. The second resolution was amended as follows, and adopted:

Resolved, That Messrs. J. PROCTOR KNOTT, of Kentucky; SCOTT LORD, of New York; WILLIAM P. LYNDE, of Wisconsin; JOHN A. MCMAHON, of Ohio; GEORGE A. JENKS, of Pennsylvania; WILLIAM A. WHEELER, of New York; and GEORGE F. HOAR, of Massachusetts, be, and they are hereby, appointed managers on the part of this House to conduct the impeachment exhibited against William W. Belknap, late Secretary of War of the United States.

Mr. WHEELER asked to be excused from service as a manager.

His request was granted, and on his motion the vacancy occasioned by his resignation was filled with the name of his colleague, Mr. LAPHAM.

At the request of Mr. KNOTT the name of Mr. LORD, of New York, was placed at the head of the list of managers.

Mr. CLYMER offered the following resolutions; which were modified and adopted:

Resolved, That the articles agreed to by this House to be exhibited in the name of themselves and of all the people of the United States against William W. Belknap, late Secretary, of War, in maintenance of their impeachment against him of high crimes and misdemeanors in office be carried to the Senate by the managers appointed to conduct said impeachment.

Resolved, That a message be sent to the Senate to inform them that this House have appointed Mr. SCOTT LORD, of New York; Mr. J. PROCTOR KNOTT, of Kentucky; Mr. WILLIAM P. LYNDE, of Wisconsin; Mr. JOHN A. MCMAHON, of Ohio; Mr. GEORGE A. JENKS, of Pennsylvania; Mr. ELBRIDGE G. LAPHAM, of New York; and Mr. GEORGE F. HOAR, of Massachusetts, managers to conduct the impeachment against William W. Belknap, late Secretary of War, and have directed the said managers to carry to the Senate the articles agreed upon by this House to be exhibited in maintenance of their impeachment against said William W. Belknap, and that the Clerk of the House do go with said message.

TUESDAY, *April* 4, 1876.

Mr. WHEELER, Speaker *pro tempore*, directed that business would be suspended to receive a report from the managers on the part of the House of the impeachment of W. W. Belknap, late Secretary of War.

The managers appointed by the House to conduct the impeachment of W. W. Belknap, late Secretary of War, appeared at the bar of the House, when

Mr. LORD said: Mr. Speaker, the managers of impeachment beg leave to report to the House that the articles of impeachment prepared by the House of Representatives against William W. Belknap, late Secretary of War, have been exhibited and read to the Senate, and the presiding officer of that body stated to the managers that the Senate would take order in the premises, due notice of which would be given to the House of Representatives.

MONDAY, *April* 17, 1876.

The following resolution was received from the Senate:

IN SENATE OF THE UNITED STATES, *April* 17, 1876.

Ordered, That the Secretary inform the House of Representatives that the Senate is sitting in its Chamber and ready to proceed with the trial of the impeachment of William W. Belknap, and that seats are provided for the accommodation of the members.

After discussion, the House voted, on motion of Mr. HOAR, of Massachusetts, that it would at one o'clock precisely resolve itself into Committee of the Whole, and as such committee attend the trial of the Ex-Secretary of War in the Senate Chamber, accompanied by the Clerk and the Speaker.

Accordingly (at one o'clock p. m.) the House, as in Committee of the Whole, preceded by its chairman, Mr. RANDALL, and accompanied by the Speaker and Clerk, followed the managers of the House to the Senate Chamber. On the return of the Committee of the Whole, (at one o'clock and thirty-five minutes,) the Speaker having resumed the chair,

Mr. RANDALL made the following report:

Mr. Speaker, the House as in Committee of the Whole, pursuant to order, accompanied the managers on the part of the House to the Senate to be present at the opening of the impeachment trial of William W. Belknap, late Secretary of War.

Later in the day, a message was received from the Senate announcing that the Senate had adopted a resolution setting the time for the trial of William W. Belknap, late Secretary of War, upon articles of impeachment exhibited against him by the House of Representatives, and transmitted to the House a copy of the plea of the said Belknap.

Mr. HOAR, one of the managers, asked unanimous consent that the communication from the Senate sitting as a court of impeachment and the copy of the plea of the Secretary of War be referred to the managers on the part of the House. There was no objection, and it was so ordered.

PROCEEDINGS OF THE SENATE

SITTING FOR

THE TRIAL OF WILLIAM W. BELKNAP,

LATE SECRETARY OF WAR,

ON THE

ARTICLES OF IMPEACHMENT EXHIBITED BY THE HOUSE OF REPRESENTATIVES.

FRIDAY, *March* 3, 1876.

The following message was received from the House of Representatives at twelve o'clock and fifty-five minutes p. m., by the hands of Mr. GREEN ADAMS, its Chief Clerk:

Mr. President, the House of Representatives has passed the following resolution:

Resolved, That a committee of five members of this House be appointed and instructed to proceed immediately to the bar of the Senate, and there impeach William W. Belknap, late Secretary of War, in the name of the House of Representatives and of all the people of the United States of America, of high crimes and misdemeanors while in office, and to inform that body that formal articles of impeachment will in due time be presented, and to request the Senate to take such order in the premises as they may deem appropriate.

And it has

Ordered, That Messrs. HIESTER CLYMER of Pennsylvania, W. M. ROBBINS of North Carolina, J. C. S. BLACKBURN of Kentucky, L. K. BASS of New York, and LORENZO DANFORD of Ohio be the committee aforesaid.

At one o'clock p. m. the Sergeant-at-Arms announced the committee from the House of Representatives, who appeared at the bar of the Senate.

The committee advanced to the area in front of the Chair, when

Mr. CLYMER said: Mr. President, in obedience to the order of the House of Representatives we appear before you, and in the name of the House of Representatives and of all the people of the United States of America, we do impeach William W. Belknap, late Secretary of War of the United States, of high crimes and misdemeanors while in office; and we further inform the Senate that the House of Representatives will in due time exhibit articles of impeachment against him, and make good the same. And in their name we demand that the Senate shall take order for the appearance of the said William W. Belknap to answer said impeachment.

The PRESIDENT *pro tempore*. Mr. Chairman and gentleman of the committee of the House of Representatives, the Senate will take order in the premises.

The committee thereupon withdrew.

Mr. EDMUNDS offered the following order; which was read:

Ordered, That the message of the House of Representatives relating to the impeachment of William W. Belknap be referred to a select committee to consist of five Senators.

Mr. EDMUNDS. I offer this order in accordance with the usual precedents. Proceeding upon the principle of the thing, I should think it would be better to refer a message of this kind to some one of the standing committees of the Senate; but following the usual course in such cases, I have framed the order in this way.

Mr. SAULSBURY. I should like to ask the Senator from Vermont whether that is the usual course?

Mr. EDMUNDS. Yes, sir; that is the usual course.

The PRESIDENT *pro tempore*. The question is on agreeing to the resolution.

The resolution was agreed to.

By unanimous consent, the President *pro tempore* was authorized to appoint the committee; and Messrs. EDMUNDS, CONKLING, FRELINGHUYSEN, THURMAN, and STEVENSON were appointed.

MONDAY, *March* 6, 1876.

Mr. EDMUNDS. I am directed by the select committee to whom was referred the message of the House of Representatives respecting the impeachment of William W. Belknap to report a preamble and resolution, and I ask for their present consideration. This is a mere formality as the next step in the orderly progress of the affair, according to the precedents.

The resolution was considered by unanimous consent and agreed to, as follows:

Whereas the House of Representatives on the 3d day of March, 1876, by five of its members, Messrs. CLYMER, ROBBINS, BLACKBURN, BASS, and DANFORD, at the bar of the Senate, impeached William W. Belknap, late Secretary of War, of high crimes and misdemeanors, and informed the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him and make good the same; and likewise demanded that the Senate take order for the appearance of the said William W. Belknap to answer the said impeachment: Therefore,

Ordered, That the Senate will, according to its standing rules and orders in such cases provided, take proper order thereon, (upon the presentation of articles of impeachment,) of which due notice shall be given to the House of Representatives.

Ordered, That the Secretary acquaint the House of Representatives herewith.

MONDAY, *April* 3, 1876.

Mr. GEORGE M. ADAMS, Clerk of the House of Representatives, appeared at the bar of the Senate and said:

Mr. President, I am directed to inform the Senate that the House of Representatives has passed the following resolutions:

Resolved, That the articles agreed to by this House to be exhibited in the name of themselves and of all the people of the United States against William W. Belknap, late Secretary of War, in maintenance of their impeachment against him of high crimes and misdemeanors in office be carried to the Senate by the managers appointed to conduct said impeachment.

Resolved, That a message be sent to the Senate to inform them that this House have appointed Mr. SCOTT LORD, of New York; Mr. J. PROCTOR KNOTT, of Kentucky; Mr. WILLIAM P. LYNDE, of Wisconsin; Mr. JOHN A. MCMAHON, of Ohio; Mr. GEORGE A. JENKS, of Pennsylvania; Mr. ELBRIDGE G. LAPHAM, of New York; and Mr. GEORGE F. HOAR, of Massachusetts, managers to conduct the impeachment against William W. Belknap, late Secretary of War, and have directed the said managers to carry to the Senate the articles agreed upon by this House to be exhibited in maintenance of their impeachment against said William W. Belknap, and that the Clerk of the House do go with said message.

The PRESIDENT *pro tempore*. The Secretary will inform the House of Representatives that the Senate will receive the managers for the purpose of exhibiting articles of impeachment agreeably to notice received.

The Clerk of the House thereupon withdrew.

TUESDAY, *April* 4, 1876.

The managers of the impeachment on the part of the House of Representatives appeared at the bar (at one o'clock and twenty-five minutes p. m.) and their presence was announced by the Sergeant-at-Arms.

The PRESIDENT *pro tempore*. The managers on the part of the House of Representatives are admitted and the Sergeant-at-Arms will conduct them to seats provided for them within the bar of the Senate.

The managers were thereupon escorted by the Sergeant-at-Arms of the Senate to the seats assigned to them in the area in front of the Chair.

Mr. Manager LORD. Mr. President, the managers on the part of the House of Representatives are ready to exhibit on the part of the House articles of impeachment against William W. Belknap, late Secretary of War.

The PRESIDENT *pro tempore*. The Sergeant-at-Arms will make proclamation.

The SERGEANT-AT-ARMS. Hear ye! hear ye! hear ye! All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against William W. Belknap, late Secretary of War.

Mr. Manager LORD rose and read the articles of impeachment, as follows:

Articles exhibited by the House of Representatives of the United States of America in the names of themselves and of all the people of the United States of America, against William W. Belknap, late Secretary of War, in maintenance and support of their impeachment against him for high crimes and misdemeanors while in said office.

ARTICLE I.

That William W. Belknap, while he was in office as Secretary of War of the United States of America, to wit, on the 8th day of October, 1870, had the power and authority, under the laws of the United States, as Secretary of War as aforesaid, to appoint a person to maintain a trading establishment at Fort Sill, a military post of the United States; that said Belknap, as Secretary of War as aforesaid, on the day and year aforesaid, promised to appoint one Caleb P. Marsh to maintain said trading establishment at said military post; that thereafter, to wit, on the day and year aforesaid, the said Caleb P. Marsh and one John S. Evans entered into an agreement in writing substantially as follows, to wit:

Articles of agreement made and entered into this 8th day of October, A. D. 1870, by and between John S. Evans, of Fort Sill, Indian Territory, United States of America, of the first part, and Caleb P. Marsh, of No. 51 West Thirty-fifth street, of the city, county, and State of New York, of the second part, witnesseth, namely:

"Whereas the said Caleb P. Marsh has received from General William W. Belknap, Secretary of War of the United States, the appointment of post-trader at Fort Sill aforesaid; and whereas the name of said John S. Evans is to be filled into the commission of appointment of said post-trader at Fort Sill aforesaid, by permission and at the instance and request of said Caleb P. Marsh, and for the purpose of carrying out the terms of this agreement; and whereas said John S. Evans is to hold said position of post-trader as aforesaid solely as the appointee of said Caleb P. Marsh, and for the purposes hereinafter stated;

"Now, therefore, said John S. Evans, in consideration of said appointment and the sum of $1 to him in hand paid by said Caleb P. Marsh, the receipt of which is hereby acknowledged, hereby covenants and agrees to pay to said Caleb P. Marsh the sum of $12,000 annually, payable quarterly in advance, in the city of New York aforesaid; said sum to be so payable during the first year of this agreement absolutely and under all circumstances, anything hereinafter contained to the contrary notwithstanding; and thereafter said sum shall be so payable, unless increased or reduced in amount, in accordance with the subsequent provisions of this agreement.

"In consideration of the premises, it is mutually agreed between the parties aforesaid as follows, namely:

"First. This agreement is made on the basis of seven cavalry companies of the United States Army, which are now stationed at Fort Sill aforesaid.

"Second. If at the end of the first year of this agreement the forces of the United States Army stationed at Fort Sill aforesaid shall be increased or diminished not to exceed one hundred men, then this agreement shall remain in full force and unchanged for the next year. If, however, the said forces shall be increased or diminished beyond the number of one hundred men, then the amount to be paid under this agreement by said John S. Evans to said Caleb P. Marsh shall be increased or reduced in accordance therewith and in proper proportion thereto. The above rule laid down for the continuation of this agreement at the close of the first year thereof shall be applied at the close of each succeeding year so long as this agreement shall remain in force and effect.

"Third. This agreement shall remain in force and effect so long as said Caleb P. Marsh shall hold or control, directly or indirectly, the appointment and position of post-trader at Fort Sill aforesaid.

"Fourth. This agreement shall take effect from the date and day the Secretary of War aforesaid shall sign the commission of post-trader at Fort Sill aforesaid, said commission to be issued to said John S. Evans at the instance and request of said Caleb P. Marsh, and solely for the purpose of carrying out the provisions of this agreement.

"Fifth. Exception is hereby made in regard to the first quarterly payment under this agreement, it being agreed and understood that the same may be paid at any time within the next thirty days after the said Secretary of War shall sign the aforesaid commission of post-trader at Fort Sill.

"Sixth. Said Caleb P. Marsh is at all times, at the request of said John S. Evans, to use any proper influence he may have with said Secretary of War for the protection of said John S. Evans while in the discharge of his legitimate duties in the conduct of the business as post-trader at Fort Sill aforesaid.

"Seventh. Said John S. Evans is to conduct the said business of post-trader at Fort Sill aforesaid solely on his own responsibility and in his own name, it being expressly agreed and understood that said Caleb P. Marsh shall assume no liability in the premises whatever.

"Eighth. And it is expressly understood and agreed that the stipulations and covenants aforesaid are to apply to and bind the heirs, executors, and administrators of the respective parties.

"In witness whereof the parties to these presents have hereunto set their hands and seals, the day and year first above written.

"JOHN S. EVANS. [SEAL.]
"C. P. MARSH. [SEAL.]

"Signed, sealed, and delivered in presence of—
"E. T. BARTLETT."

That thereafter, to wit, on the 10th day of October, 1870, said Belknap, as Secretary of War aforesaid, did, at the instance and request of said Marsh, at the city of Washington, in the District of Columbia, appoint said John S. Evans to maintain said trading establishment at Fort Sill, the military post aforesaid, and in consideration of said appointment of said Evans, so made by him as Secretary of War as aforesaid, the said Belknap did, on or about the 2d day of November, 1870, unlawfully and corruptly receive from said Caleb P. Marsh the sum of $1,500, and that at divers times thereafter, to wit, on or about the 17th day of January, 1871, and at or about the end of each three months during the term of one whole year, the said William W. Belknap, while still in office as Secretary of War as aforesaid, did unlawfully receive from said Caleb P. Marsh like sums of $1,500, in consideration of the appointment of the said John S. Evans by him, the said Belknap, as Secretary of War as aforesaid, and in consideration of his permitting said Evans to continue to maintain the said trading establishment at said military post during that time; whereby the said William W. Belknap, who was then Secretary of War as aforesaid, was guilty of high crimes and misdemeanors in office.

ARTICLE II.

That said William W. Belknap, while he was in office as Secretary of War of the United States of America, did, at the city of Washington, in the District of Columbia, on the 4th day of November, 1873, willfully, corruptly, and unlawfully take and receive from one Caleb P. Marsh the sum of $1,500, in consideration that he would continue to permit one John S. Evans to maintain a trading establishment at Fort Sill, a military post of the United States, which said establishment said Belknap, as Secretary of War as aforesaid, was authorized by law to permit to be maintained at said military post, and which the said Evans had been before that time appointed by said Belknap to maintain; and that said Belknap, as Secretary of War as aforesaid, for said consideration, did corruptly permit the said Evans to continue to maintain the said trading establishment at said military post. And so the said Belknap was thereby guilty, while he was Secretary of War, of a high misdemeanor in his said office.

ARTICLE III.

That said William W. Belknap was Secretary of War of the United States of America before and during the month of October, 1870, and continued in office as such Secretary of War until the 2d day of March, 1876; that as Secretary of War as aforesaid said Belknap had authority, under the laws of the United States, to appoint a person to maintain a trading establishment at Fort Sill, a military post of the United States, not in the vicinity of any city or town; that on the 10th day of October, 1870, said Belknap, as Secretary of War as aforesaid, did, at the city of Washington, in the District of Columbia, appoint one John S. Evans to maintain said trading establishment at said military post; and that said John S. Evans, by virtue of said appointment, has since, till the 2d day of March, 1876, maintained a trading establishment at said military post, and that said Evans, on the 8th day of October, 1870, before he was so appointed to maintain said trading establishment as aforesaid, and in order to procure said appointment and to be continued therein, agreed with one Caleb P. Marsh that, in consideration that said Belknap would appoint him, the said Evans, to maintain said trading establishment at said military post, at the instance and request of said Marsh, he, the said Evans, would pay to him a large sum of money, quarterly, in advance, from the date of his said appointment by said Belknap, to wit, $12,000 during the year immediately following the 10th day of October, 1870, and other large sums of money, quarterly, during each year that he, the said Evans, should be permitted by said Belknap to maintain said trading establishment at said post; that said Evans did pay to said Marsh said sum of money quarterly during each year after his said appointment, until the month of December, 1875, when the last of said payments was made; that said Marsh, upon the receipt of each of said payments, paid one-half thereof to him, the said Belknap. Yet the said Belknap, well knowing these facts, and having the power to remove said Evans from said position at any time, and to appoint some other person to maintain said trading establishment, but criminally disregarding his duty as Secretary of War, and basely prostituting his high office to his lust for private gain, did unlawfully and corruptly continue said Evans in said position and permit him to maintain said establishment at said military post during all of said time, to the great injury and damage of the officers and soldiers of the Army of the United States stationed at said post, as well as of emigrants, freighters, and other citizens of the United States, against public policy, and to the great disgrace and detriment of the public service.

Whereby the said William W. Belknap was, as Secretary of War as aforesaid, guilty of high crimes and misdemeanors in office.

ARTICLE IV.

That said William W. Belknap, while he was in office and acting as Secretary of War of the United States of America, did, on the 10th day of October, 1870, in the exercise of the power and authority vested in him as Secretary of War as aforesaid by law, appoint one John S. Evans to maintain a trading establishment at Fort Sill, a military post of the United States, and he, the said Belknap, did receive, from one Caleb P. Marsh, large sums of money for and in consideration of his having so appointed said John S. Evans to maintain said trading establishment at said military post, and for continuing him therein, whereby he has been guilty of high crimes and misdemeanors in his said office.

Specification 1.—On or about the 2d day of November, 1870, said William W. Belknap, while Secretary of War as aforesaid, did receive from Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and for continuing him therein.

Specification 2.—On or about the 17th day of January, 1871, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and for continuing him therein.

Specification 3.—On or about the 18th day of April, 1871, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 4.—On or about the 25th day of July, 1871, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 5.—On or about the 10th day of November, 1871, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 6.—On or about the 15th day of January, 1872, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 7.—On or about the 13th day of June, 1872, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 8.—On or about the 22d day of November, 1872, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 9.—On or about the 28th day of April, 1873, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,000, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 10.—On or about the 16th day of June, 1873, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,700, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 11.—On or about the 4th day of November, 1873, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 12.—On or about the 22d day of January, 1874, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 13.—On or about the 10th day of April, 1874, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 14.—On or about the 9th day of October, 1874, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 15.—On or about the 24th day of May, 1875, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 16.—On or about the 17th day of November, 1875, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 17.—On or about the 15th day of January, 1876, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $750, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

ARTICLE V.

That one John S. Evans was, on the 10th day of October, in the year 1870, appointed by the said Belknap to maintain a trading establishment at Fort Sill, a military post on the frontier, not in the vicinity of any city or town, and said Belknap did, from that day continuously to the 2d day of March, 1876, permit said Evans to maintain the same; and said Belknap was induced to make said appointment by the influence and request of one Caleb P. Marsh; and said Evans paid to said Marsh, in consideration of such influence and request and in consideration that he should thereby induce said Belknap to make said appointment, divers large sums of money at various times, amounting to about $12,000 a year from the date of said appointment to the 25th day of March, 1872, and to about $6,000 a year thereafter until the 2d day of March, 1876, all which said Belknap well knew; yet said Belknap did, in consideration that he would permit said Evans to continue to maintain said trading establishment and in order that said payments might continue and be made by said Evans to said Marsh as aforesaid, corruptly receive from said Marsh, either to his, the said Belknap's, own use or to be paid over to the wife of said Belknap, divers large sums of money at various times, namely: the sum of $1,500 on or about the 2d day of November, 1870; the sum of $1,500 on or about the 17th day of January, 1871; the sum of $1,500 on or about the 18th day of April, 1871; the sum of $1,500 on or about the 25th day of July, 1871; the sum of $1,500 on or about the 10th day of November, 1871; the sum of $1,500 on or about the 15th day of January, 1872; the sum of $1,500 on or about the 13th day of June, 1872; the sum of $1,500 on or about the 22d day of November, 1872; the sum of $1,000 on or about the 28th day of April, 1873; the sum of $1,700 on or about the 16th day of June, 1873; the sum of $1,500 on or about the 4th day of November, 1873; the sum of $1,500 on or about the 22d day of January, 1874; the sum of $1,500 on or about the 10th day of April, 1874; the sum of $1,500 on or about the 9th day of October, 1874; the sum of $1,500 on or about the 24th day of May, 1875; the sum of $1,500 on or about the 17th day of November, 1875; the sum of $750 on or about the 15th day of January, 1876; all of which acts and doings were while the said Belknap was Secretary of War of the United States, as aforesaid, and were a high misdemeanor in said office.

And the House of Representatives by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles of accusation or impeachment against the said William W. Belknap, late Secretary of War of the United States, and also of replying to his answers which he shall make unto the articles herein preferred against him, and of offering proof to the same and every part thereof, and to all and every other article, accusation, or impeachment which shall be exhibited by them, as the case shall require, do demand that the said William W. Belknap may be put to answer the high crimes and misdemeanors in office herein charged against him, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

The PRESIDENT *pro tempore*. The Chair informs the managers that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.

The managers thereupon withdrew.

On motion of Mr. EDMUNDS, it was

Ordered, That the articles of impeachment presented this day by the House of Representatives be printed for the use of the Senate.

WEDNESDAY, *April* 5, 1876.

Mr. EDMUNDS. I wish to ask the attention of the Senate to a matter which I, after consultation with as many Senators as I could find, think it necessary to bring to the notice of the Senate respecting the matter of the impeachment to-day. The third rule of the Senate in regard to impeachments provides that on this day at one o'clock—

The presiding officer shall administer the oath hereinafter provided to the members of the Senate then present, and to the other members of the Senate as they shall appear, whose duty it shall be to take the same.

But on examination we are unable to find any statute of the United States which authorizes the President of the Senate or the presiding officer to administer this oath. It stands upon the rule alone. The language of the statute about the authority of the presiding officer is that, when Senators appear to take their seats upon an election to this body, the presiding officer shall swear them in, and any Senator may administer a similar oath to the Vice-President, the President of the Senate, when he appears; and there the statute stops except in respect of witnesses who are by law to be sworn by the President of the Senate.

In this state of difficulty and in the very grave doubt, at least, that in the minds of all the gentlemen whom I have been able to consult there is about this being a constitutional compliance with that requirement which obliges us to be under oath, (which, of course, implies a legal and binding oath,) we have thought it best for this occasion, until provision can be made by law, to submit to the Senate a proposition that the Chief Justice of the United States be invited to attend at one o'clock to-day to administer these oaths, there being no question about his authority to do so. Therefore, Mr. President, I ask unanimous consent that this portion of Rule 3 which I have read, respecting the administration of the oath by the presiding officer, shall be suspended for this day; and if that be unanimously agreed to, as of course it requires unanimous consent to suspend this rule, I shall then offer an order which will accomplish the next step in the matter.

The PRESIDENT *pro tempore*. The Senate has heard the proposition of the Senator from Vermont, that so much of the rule as pertains to the swearing in of the Senators by the presiding officer be suspended for to-day. Is there objection? [A pause.] The Chair hears none. The order is unanimously made.

Mr. EDMUNDS. I now offer the following order:

Ordered, That a committee of two Senators be appointed by the Chair to wait upon the Chief Justice of the United States and invite him to attend in the Senate Chamber at one o'clock p. m. this day to administer to Senators the oath required by the Constitution in the matter of the impeachment of William W. Belknap, late Secretary of War.

Mr. INGALLS. Can the Senator from Vermont inform us if the authority of the Chief Justice is statutory to administer oaths in cases of impeachment?

Mr. EDMUNDS. No, sir; not to administer oaths in cases of impeachment; but there is a general authority given the judges of the courts of the United States to administer any oath that it is lawful for any person to take, to swear persons upon affidavits, or swear any body into office, or administer any other oath in the course of proceedings, as we understand the law.

Mr. HAMLIN. I desire to inquire of the Senator from Vermont if he knows certainly that it will be within the power of the Chief Justice to attend, and if not, I suggest whether it would not be well to make his resolution in the alternative, in case the Chief Justice should not be able to attend, then some associate justice.

Mr. EDMUNDS. I think that may be very well, and I will modify the resolution by adding, "or, in case of his inability to attend, any one of the associate justices."

While that correction is being made we propose, as is suggested by the Senator from Ohio, [Mr. THURMAN,] to introduce a bill presently to provide for cases of this character, and also to provide, as probably we ought, (although that would be a matter for consideration,) an authority to the Secretary or the Chief Clerk to administer oaths to witnesses, which by statute does not now exist, though that has usually been practiced; but it is certainly not authorized by law, so far as can be discovered.

Mr. BOGY. I could not very distinctly hear what the Senator from Vermont said; therefore I am a little at a loss, and would like to know the reason why the presiding officer cannot administer the oaths required on this occasion.

Mr. EDMUNDS. The reason I stated was that, as we understand it, in order to make an oath a lawful oath, it must be administered by some person authorized by law to administer oaths, and there is no law that can be discovered which confers that authority, the present law merely conferring it upon the presiding officer in the case of the first appearance of Senators when elected.

Mr. BOGY. The difficulty was that I had not heard the Senator from Vermont distinctly.

Mr. WRIGHT. I ask to have the resolution reported as modified.

The PRESIDENT *pro tempore*. The resolution will be reported.

The Chief Clerk read as follows:

Ordered, That a committee of two Senators be appointed by the Chair to wait upon the Chief Justice of the United States and invite him to attend in the Senate Chamber at one o'clock p. m. this day, or, in case of his inability to attend, any one of the associate justices.

The PRESIDENT *pro tempore*. The question is on agreeing to the resolution.

The resolution was agreed to.

The PRESIDENT *pro tempore*. The Chair appoints the Senator from Vermont [Mr. EDMUNDS] and the Senator from Ohio [Mr. THURMAN] as the committee.

The Chief Justice of the United States, Hon. Morrison R. Waite, subsequently entered the Senate Chamber, escorted by Messrs. EDMUNDS and THURMAN, the committee appointed for the purpose.

The PRESIDENT *pro tempore*. The hour of one o'clock having arrived, the Senate, according to its rule, will now proceed to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War. The Chief Justice will take the seat provided for him at the right of the Chair.

The Chief Justice took a seat by the side of the President *pro tempore* of the Senate.

The PRESIDENT *pro tempore*. The Senate will give attention while the constitutional oath is being administered.

The Chief Justice administered the oath to the President *pro tempore*, as follows:

You do solemnly swear that in all things appertaining to the trial of the impeachment of William W. Belknap, late Secretary of War, now pending, you will do impartial justice according to the Constitution and laws: So help you God.

The PRESIDENT *pro tempore*. The Secretary will now call the roll of Senators alphabetically in groups of six, and Senators as they are so called will advance to the desk and take the oath.

Mr. MORTON. If there be no objection on the part of any Senator, I suggest that all the Senators be sworn at once, standing in their places. I see no objection to that. It will save time and some trouble.

The PRESIDENT *pro tempore*. Is there objection to the proposition of the Senator from Indiana?

Mr. THURMAN. There may be some doubt about verifying who are sworn if we proceed in that way. I think we had better follow the precedent heretofore established.

Mr. MORTON. Very well.

The Secretary proceeded to call the roll alphabetically, and the Chief Justice administered the oath to Senators ANTHONY, BAYARD, BOGY, BOOTH, BOUTWELL, BRUCE, CAMERON of Pennsylvania, CAMERON of Wisconsin, CLAYTON, COCKRELL, COOPER, CRAGIN, DAVIS, DAWES, DORSEY, EATON, EDMUNDS, FRELINGHUYSEN, GORDON, HAMILTON, HAMLIN, HARVEY, HITCHCOCK, INGALLS, JONES of Florida, KELLY, KERNAN, KEY, LOGAN, MCCREERY, MCDONALD, MCMILLAN, MAXEY, MERRIMON, MITCHELL, MORRILL of Vermont, MORTON, NORWOOD, OGLESBY, PADDOCK, RANDOLPH, SARGENT, SAULSBURY, SHARON, SHERMAN, SPENCER, STEVENSON, THURMAN, WALLACE, WEST, WHYTE, WINDOM, WITHERS, and WRIGHT.

The PRESIDENT *pro tempore*. The absentees on the call will now be called, so that in case they have entered the Chamber since the oath has been administered they may come forward.

The Chief Clerk called the names of the absentees, as follows: Messrs. ALCORN, ALLISON, BURNSIDE, CAPERTON, CHRISTIANCY, CONKLING, CONOVER, DENNIS, ENGLISH, GOLDTHWAITE, HOWE, JOHNSTON, JONES of Nevada, MORRILL of Maine, PATTERSON, RANSOM, ROBERTSON, and WADLEIGH.

The Chief Justice thereupon withdrew from the Senate Chamber, escorted by Messrs. EDMUNDS and THURMAN.

Mr. FRELINGHUYSEN. Mr. President, I offer the following order, and ask for its present consideration;

Ordered, That the Secretary notify the House of Representatives that the Senate is now organized for the trial of articles of impeachment against William W. Belknap, late Secretary of War, and is ready to receive the managers on the part of the House at its bar.

The order was agreed to.

At one o'clock and forty minutes p. m. the managers of the impeachment on the part of the House of Representatives appeared at the bar and their presence was announced by the Sergeant-at-Arms.

The PRESIDENT *pro tempore*. The Sergeant-at-Arms will conduct the managers to the seats provided for them within the bar of the Senate.

The managers were conducted to the seats assigned them within the space in front of the Secretary's desk.

The PRESIDENT *pro tempore*. Gentlemen managers, the Senate is now organized for the trial of the impeachment of William W. Belknap, late Secretary of War.

Mr. Manager LORD rose and said: Mr. President, we pray for the issuing of process against William W. Belknap, late Secretary of War, on the articles hitherto presented.

Mr. EDMUNDS. Mr. President, I offer the following order:

Ordered, That a summons be issued, as required by the rules of procedure and practice in the Senate when sitting for the trial of impeachment, to William W. Belknap, returnable on Monday, the 17th day of the present month, at one o'clock in the afternoon.

The PRESIDENT *pro tempore* put the question on the proposed order, and it was agreed to.

Mr. Manager LORD. That is satisfactory to the managers.

The managers thereupon withdrew.

Mr. STEVENSON. If there is no further business I move that the court adjourn.

Mr. EDMUNDS. I do not think that is precisely the proper motion to make under the rules. I think we ought to adjourn until the day at which the summons is returnable; and therefore——

Mr. STEVENSON. I should like to ask the Senator from Vermont whether the counsel of General Belknap are satisfied with the period of time fixed for his appearance?

Mr. EDMUNDS. I do not understand the Senator.

Mr. STEVENSON. I desire to know whether there has been any conference with General Belknap's counsel to learn whether the period fixed for his appearance is ample enough to meet with their wishes.

Mr. EDMUNDS. I am not authorized to speak for anybody but myself. Speaking for myself, I say, as a Senator sitting on this trial and as a judge, that I have not had and do not expect to have any conference with the counsel of General Belknap; but I have proposed this period of time as a reasonable and suitable one. Of course, when he appears, if he needs further time he will apply for it.

Mr. STEVENSON. Mr. President, I did not suppose there was any impropriety in the question, nor did I suppose that there was anything that could be implied by the question; but certainly a good deal of time may be saved to the Senate, and I see no impropriety in the managers, if they think proper, before the time is fixed, having a friendly interview with the counsel of General Belknap as to what would be a proper time. If we adjourn now until Monday week, and then ten days more should be asked, we shall lose that much time, which it seems to me might be avoided by some conference with the counsel of General Belknap. That was the only reason I made the suggestion.

Mr. EDMUNDS. I am sure the Senator ought not to have understood me as intending to reflect on the propriety of his question, but only as stating my own view of what it would be proper for me to do under the circumstances. I move that the Senate sitting for this trial adjourn until the 17th instant.

Mr. BOGY. Before the motion to adjourn is put I should like to make an inquiry; and I call the attention of the Senator from Vermont to what I am about to state. I see by the twenty-fourth rule that the summons has to be returned to the Senate or to the court at twelve o'clock and thirty minutes p. m.; and this order speaks of one o'clock.

The PRESIDENT *pro tempore*. The motion to adjourn does not fix the time.

Mr. EDMUNDS. The Senator has turned to a form, and that form happens to say twelve o'clock and thirty minutes, but the Senate has ordered, changing that form which I thought it was convenient to do, and as it was merely a form I did not suppose it was necessary to make a separate motion on that subject to make the form say "one o'clock," in order that the necessary preliminaries from half-past twelve, usual on such occasions, might take place beforehand.

Mr. BOGY. That may be; I speak on this subject with very great modesty, for I really know nothing about it; but, nevertheless, the forms being given in the rules, I am of the opinion that they are a part of the rules, and unless a very good reason can be given why the forms should be departed from, it may be that the very first step we take in this proceeding may possibly be wrong. The form is given in a joint rule, and it would be a very easy thing to conform to that form which appears to be a part of that joint rule as adopted for this specific purpose.

Mr. EDMUNDS. It is not a joint rule, but a rule of the Senate. It is a form of the Senate rather than a rule.

Mr. BOGY. It is a Senate rule, nevertheless; and why not conform to the rule?

Mr. EDMUNDS. It would have been very well to have made that suggestion before the order of the Senate had been adopted fixing the hour of one o'clock as the moment at which this accused person should appear. But if the Senate has adopted an order which is contrary to a form which it had previously adopted, I take it that the adoption of this order must, for the time being, override the form of the writ of summons fixing a different hour.

Mr. BOGY. I would suggest to the Senator is it not a rule? The form makes it a rule. Is it not so?

Mr. EDMUNDS. Suppose that to be so, if the Senate, without objection, orders that a particular moment named in the rule shall be for a particular occasion changed to another moment, I take it that order making the change would be binding nevertheless. Certainly the Senate, in the presence of the managers, has ordered that this summons shall issue for this person to appear on the 17th instant, at the hour of one o'clock in the afternoon, which is, to be sure, a half hour later than the form of the summons names. So the present order of the Senate is that the summons go in that way; and until that order is reversed, I take it, it will bind the President of the Senate and the executive officers to follow it.

The PRESIDENT *pro tempore*. The Senator from Vermont moves that the Senate sitting for the trial of the impeachment adjourn until the 17th instant.

Mr. BOGY. The suggestion I have made has not been disposed of. Perhaps there is nothing that the court can dispose of. Nevertheless it does seem to me that the form is a rule, a rule prescribed by the Senate for the government of the Senate when it sits as a court. This body in its capacity of a court has changed that rule. It may be altogether proper; I am not clear that it is proper. If there could be any way by which we could retrace our steps and conform to what appears to me to be a rule, because it is a form prescribed by the Senate as a Senate for the government of this court as a court of impeachment, and which we as a court perhaps cannot well change, it is a subject worthy of being considered, and I suggest that the matter be more thoroughly investigated.

Mr. EDMUNDS. Mr. President, I think it right to say to my friend from Missouri that so far from our inability to change the forms of procedure sitting as a court, as the expression is, when the late Chief Justice of the United States appeared, these rules having been adopted by the Senate before he did appear to preside at the trial of Mr. Johnson, the President of the United States, he thought, and submitted to the Senate that it ought to adopt these rules while we were sitting as a court, inasmuch as its composition was such that a new element was introduced into it on that occasion. And accordingly the Senate sitting as a court, or sitting for the trial of the impeachment, which is the same thing, adopted over again these rules as part of its orders. So I think there can be no question, judging from the previous consideration given to the subject, that it is perfectly competent for us to change or to modify these forms by any order that we choose to make sitting as a court. That was the general opinion at that time. Although it was thought by many Senators that it was quite unnecessary to adopt them over again merely because the Chief Justice, a new element, had come in, yet everybody agreed that it was competent to do it; and, out of respect to his wishes, it was done.

Mr. SHERMAN. If I understand it, the Senate have only fixed one o'clock as the hour for the return of the process. It seems to me we ought to adjourn until half past twelve o'clock, with a view to making the necessary preliminaries before that.

Mr. EDMUNDS. Certainly, that is the time the rule provides we shall meet.

Mr. SHERMAN. I do not see that there is any difficulty. The summons calls on General Belknap to appear at one o'clock. That is not at all inconsistent with the rule; but the court is to convene at half past twelve o'clock for the purpose of making preliminary orders and arrangements. The action of the Senate thus far is in perfect harmony with the rules.

Mr. BAYARD. All that I have to guide my mind is the rules of the Senate on the subject. Looking at them, it seems to me that the suggestion of the Senator from Missouri is entitled to a great deal of consideration. Rule 7 provides that—

The presiding officer of the Senate shall direct all necessary preparations in the Senate Chamber, and the presiding officer on the trial shall direct all the forms of proceedings while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for.

There is in the twenty-fourth rule a special provision, according to my understanding, of the form of the summons to be served upon the party impeached, and that form requires the impeached party—

To be and appear before the Senate of the United States of America, at their Chamber in the city of Washington, on the —— day of ——, at twelve o'clock and thirty minutes after noon, then and there to answer to the said articles of impeachment, &c.

By Rule 9 it is provided that—

At twelve o'clock and thirty minutes after noon of the day appointed for the return of the summons against the person impeached, the legislative and executive business of the Senate shall be suspended, and the Secretary of the Senate shall administer an oath to the returning officer in the form following.

Then follows the form prescribed for the returning officer. The tenth rule provides that—

The person impeached shall then be called to appear and answer the articles of impeachment against him. If he appear, or any person for him, the appearance shall be recorded, stating particularly if by himself, or by agent or attorney, naming the person appearing, and the capacity in which he appears.

It seems to me, with all due respect for the superior experience of those who have heretofore sat in business of this kind, that the language of the rules is directory, and I cannot imagine any inconvenience or ill to follow from our following their language with precision. If the Senate has, from inadvertence or from any other cause, fixed a time for the appearance contrary to that prescribed by the form contained in Rule 24, it seems to me that it is erring upon the side of caution if it follows the rule by amending the order lately made. I see no possible objection to the amendment of the order, and if it be fixed at twelve o'clock and thirty minutes of the afternoon of the day named for the return of the writ, then it will be in precise accordance with the form prescribed in Rule 24 and also in accordance with Rules 9 and 10, which fix the time of the return of that writ for the swearing of the officer as to the true service of the process and of the appearance of the party, either in person or by attorney. I think it is just possible that there might be a technical objection made to the hour and minute of the return of this service. It may not be one of substance; but even if of form, if it be necessary for the Senate then to pass upon it, certainly the necessity for passing upon it can be saved by an amendment of the order of the Senate as made just now.

Therefore I trust there will be a reconsideration of that order for the purpose of having an order made in accordance with the twenty-fourth rule. No harm can come, but much difficulty may be saved.

Mr. WHYTE. Mr. President, I should like to ask the President of the Senate whether it is not proper for us in the first instance, as a court, to adopt the rules of procedure by the Senate in cases of impeachment? It was the opinion of the Chief Justice in the trial which last took place in this Hall that while the Senate might as a Senate in its legislative capacity adopt certain rules in regard to impeachment, it was necessary for the Senate when sitting as a court of impeachment to adopt those rules as such court. Therefore I suggest to the Chair whether it is not proper for us in this instance to adopt the rules before we discuss any questions arising under those rules?

Mr. EDMUNDS. I insist upon the motion I made, that the Senate, sitting for the trial of this impeachment, stand adjourned until the 17th instant at half past twelve o'clock.

Mr. BOGY. Before that motion is put I hope that this matter may be further considered. I intend to present a motion that the order which has been made, for the return of service at one o'clock, be amended so as to make the return at half past twelve.

Mr. EDMUNDS. That cannot be properly done without the presence of the managers.

Mr. BOGY. Why is it not proper?

Mr. EDMUNDS. And there is not the slightest need of it.

Mr. BOGY. I can see no reason for the Senator's suggestion. Any order made by a court can be changed by the court on a proper case being made out. I desire to present the question to this body in a proper way. The very limited discussion which has taken place upon the subject has tended to confirm me in the belief that we are departing, in the very first step we take, from the rules prescribed for our guidance. If the motion of the Senator from Vermont be insisted upon, I hope it will not be carried, so that I may make a motion to amend the order which has been made.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from Vermont, that the Senate sitting for the trial of the impeachment adjourn until the 17th instant at half past twelve o'clock.

Mr. BOGY. The motion I would make of course cannot be entertained if that motion is carried.

Mr. EDMUNDS. That is so.

Mr. BOGY. I am extremely sorry that at the very first step the Senator from Vermont should be rather disposed to cut short and be curt about this thing. I desire no offense to him and do not question anything he may have done. I am inclined to think we have committed an error; and the views expressed by the Senator from Delaware confirm me in that opinion. To dispose of this thing in that manner, I think, is not treating the subject or those persons that do not agree with the Senator with much courtesy.

Mr. EDMUNDS. I ask unanimous consent to make an observation, as all this debate is out of order.

The PRESIDENT *pro tempore*. The Chair will state that as different Senators were speaking he supposed it was done by unanimous consent. The rule is explicit that there shall be no debate.

Mr. EDMUNDS. I ask unanimous consent to make a statement.

The PRESIDENT *pro tempore*. Is there objection? The Chair hears none.

Mr. EDMUNDS. I wish to state to my honorable friend from Missouri that I have not intended to be either curt or short; but after the subject has, by unanimous consent, been considered upon both sides of the views it struck me that the simplest way of testing the sense of the Senate upon this question of half past twelve or one o'clock would be to make this motion. If a majority of this body are of opinion that we have exceeded our jurisdiction in making this order returnable at one o'clock instead of half past twelve, of course it will be their bounden duty to refuse to adjourn and to send for the managers and have the order amended; but if they are of opinion that this court can change one of its forms by making an order inconsistent with it as to an hour, without violating the Constitution of the United States, then I take it the Senate will be willing to adjourn until that time. Making this explanation to my friend, lest he may have misunderstood the spirit in which I made the motion, I take my seat.

Mr. BOGY. I shall feel compelled under the circumstances to call for the yeas and nays upon the question, a thing which I have never done in this body before. I think we are starting wrong in this thing, and therefore I call for the yeas and nays on the motion of adjournment.

The yeas and nays were ordered.

The PRESIDENT *pro tempore*. The Secretary will call the roll of Senators who have been duly sworn.

The Chief Clerk called the roll, as directed; and the result was announced—yeas 38, nays 10; as follows:

YEAS—Messrs. Anthony, Booth, Bontwell, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Clayton, Cockrell, Dawes, Dorsey, Edmunds, Frelinghuysen, Gordon, Hamilton, Hamlin, Hitchcock, Jones of Florida, Kelly, Kernan, Key, Logan, McCreery, McDonald, McMillan, Maxey, Merrimon, Mitchell, Morrill of Vermont, Morton, Oglesby, Paddock, Sargent, Sherman, Spencer, Wallace, West, Windom, and Wright—38.

NAYS—Messrs. Bayard, Bogy, Cooper, Davis, Eaton, Norwood, Randolph, Saulsbury, Whyte, and Withers—10.

NOT VOTING—Messrs. Cragin, Ferry, Harvey, Ingalls, Sharon, Stevenson, and Thurman—7.

The PRESIDENT *pro tempore*. The Senate sitting for the trial of the impeachment stands adjourned until the 17th instant, at twelve o'clock and thirty minutes p. m.

MONDAY, *April* 17, 1876.

The Chief Justice of the United States entered the Senate Chamber, escorted by Messrs. EDMUNDS and THURMAN, the committee appointed for the purpose.

The PRESIDENT *pro tempore*. The hour of twelve o'clock and thirty minutes having arrived, in pursuance of rule the legislative and executive business of the Senate will be suspended and the Senate will proceed to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The Chief Justice took a seat by the side of the President *pro tempore* of the Senate.

The PRESIDENT *pro tempore*. The Sergeant-at-Arms will make the opening proclamation.

The SERGEANT-AT-ARMS. Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence on pain of imprisonment while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The PRESIDENT *pro tempore*. The Secretary will now call the names of those Senators who have not been sworn, and such Senators as they are called will advance to the desk and take the oath.

The Secretary proceeded to call the names of the Senators who had not been heretofore sworn; and the Chief Justice administered the oath to Senators ALLISON, BURNSIDE, CAPERTON, CHRISTIANCY, CONKLING, CONOVER, DENNIS, GOLDTHWAITE, HOWE, JONES of Nevada, MORRILL of Maine, RANSOM, and ROBERTSON.

On motion of Mr. EDMUNDS, it was

Ordered, That the Secretary inform the House of Representatives that the Senate is in its Chamber and ready to proceed with the trial of the impeachment of William W. Belknap, and that seats are provided for the accommodation of the members.

The PRESIDENT *pro tempore*. The Secretary will invite the House accordingly.

At one o'clock p. m. William W. Belknap entered the Senate Chamber, accompanied by his counsel, Hon. Jeremiah S. Black, Hon. Montgomery Blair, and Hon. M. H. Carpenter, who were conducted to the seats assigned them in the space in front of the Secretary's desk on the right of the Chair.

At one o'clock and two minutes p. m. the Sergeant-at-Arms announced the managers on the part of the House of Representatives.

The PRESIDENT *pro tempore*. The managers will be admitted and conducted to seats provided for them within the bar of the Senate.

The managers were conducted to seats provided in the space in front of the Secretary's desk on the left of the Chair, namely: Hon. SCOTT LORD, of New York; Hon. J. PROCTOR KNOTT, of Kentucky; Hon. WILLIAM P. LYNDE, of Wisconsin; Hon. J. A. MCMAHON, of Ohio; Hon. G. A. JENKS, of Pennsylvania; Hon. E. G. LAPHAM, of New York; and Hon. GEORGE F. HOAR, of Massachusetts.

Mr. Manager LORD. Mr. President, in accordance with the invitation extended, the House of Representatives has resolved itself into a Committee of the Whole and will attend upon this sitting of this court on being waited upon by the Sergeant-at-Arms.

The PRESIDENT *pro tempore*. The Sergeant-at-Arms will wait upon the House of Representatives and invite them to the Chamber of the Senate.

At one o'clock and five minutes p. m. the Sergeant-at-Arms announced the presence of the members of the House of Representatives, who entered the Senate Chamber preceded by the chairman of the Committee of the Whole House, (Mr. SAMUEL J. RANDALL, of Pennsylvania,) into which that body had resolved itself to witness the trial, who was accompanied by the Speaker and Clerk of the House.

The PRESIDENT *pro tempore*. The Secretary will now read the minutes of the sitting on Wednesday, the 5th instant.

The Secretary read the Journal of proceedings of the Senate sitting for trial of the impeachment of Wednesday, April 5, 1876.

The PRESIDENT *pro tempore*. The Secretary will now read the return of the Sergeant-at-Arms to the summons directed to be served.

The Secretary read the following return appended to the writ of summons:

The foregoing writ of summons addressed to William W. Belknap and the foregoing precept addressed to me were duly served upon the said William W. Belknap by delivering to and leaving with him true and attested copies of the same at No. 2022 G street, Washington City, the residence of the said William W. Belknap, on Thursday the 6th day of April, 1876, at six o'clock and forty minutes in the afternoon of that day.

JOHN R. FRENCH,
Sergeant-at-Arms of the Senate of the United States.

The PRESIDENT *pro tempore*. The Chair understands that Rule 9 will be suspended for reasons already stated, and the Chief Justice will now administer the oath to the officer attesting the truth of this return.

The Chief Justice administered the following oath to the Sergeant-at-Arms:

I, John R. French, do solemnly swear that the return made by me upon the process issued on the 6th day of April, by the Senate of the United States, against W. W. Belknap, is truly made, and that I have performed such service as therein described: So help me God.

The PRESIDENT *pro tempore*. The committee will please escort the Chief Justice to the Supreme Court room.

The Chief Justice retired, escorted by the committee, Mr. EDMUNDS and Mr. THURMAN.

The PRESIDENT *pro tempore*. The Sergeant-at-Arms will now call William W. Belknap, the respondent, to appear and answer the charges of impeachment brought against him.

The SERGEANT-AT-ARMS. William W. Belknap, William W. Belknap, appear and answer the articles of impeachment exhibited against you by the House of Representatives.

Mr. CARPENTER. Mr. President, William W. Belknap, a private citizen of the United States and of the State of Iowa, in obedience to the summons of the Senate sitting as a court of impeachment to try the articles presented against him by the House of Representatives of the United States, appears at the bar of the Senate sitting as a court of impeachment and interposes the following plea; which I will ask the Secretary to read and request that it may be filed.

The Secretary read as follows:

In the Senate of the United States sitting as a court of impeachment.

THE UNITED STATES OF AMERICA } Upon articles of impeachment of the House of
vs. } Representatives of the United States of
WILLIAM W. BELKNAP. } America, of high crimes and misdemeanors.

And the said William W. Belknap, named in the said articles of impeachment, comes here before the honorable the Senate of the United States sitting as a court of impeachment, in his own proper person, and says that this honorable court ought not to have or take further cognizance of the said articles of impeachment exhibited and presented against him by the House of Representatives of the United States, because, he says, that before and at the time when the said House of Representatives ordered and directed that he, the said Belknap, should be impeached at the bar of the Senate, and at the time when the said articles of impeachment were exhibited and presented against him, the said Belknap, by the said House of Representatives, he, the said Belknap, was not, nor hath he since been, nor is he now an officer of the United States; but at the said times was, ever since hath been, and now is a private citizen of the United States and of the State of Iowa; and this he, the said Belknap, is ready to verify; wherefore he prays judgment whether this court can or will take further cognizance of the said articles of impeachment.

WM. W. BELKNAP.

UNITED STATES OF AMERICA,
District of Columbia, ss:

William W Belknap, being first duly sworn on oath, says that the foregoing plea by him subscribed is true in substance and fact.

WM. W. BELKNAP.

Subscribed and sworn to before me this 17th day of April, 1876.

DAVID DAVIS,
Associate Justice of the Supreme Court of the United States.

Mr. CARPENTER. Mr. President, Judge Jeremiah S. Black, Hon. Montgomery Blair, and myself also appear as counsel for Mr. Belknap.

The PRESIDENT *pro tempore*. The Secretary will note the appearance of the respondent and the presence of the counsel named.

Mr. Manager LORD. Mr. President, the managers pray a copy of the plea that has been filed, and the House of Representatives ask time to consider what replication to make to the plea of William W. Belknap, late Secretary of War, to the jurisdiction of this Senate sitting as a court of impeachment.

The PRESIDENT *pro tempore*. There is no objection, I believe, to the filing of the plea of the respondent. The Chair hears no objection; it will be filed. The managers will please reduce their motion to writing.

Mr. Manager LORD. We will do so.

The PRESIDENT *pro tempore*. The Chair will state to the officers and members of the House of Representatives, that if it is to their convenience to withdraw at any time, they are at liberty to do so.

The House of Representatives then withdrew.

Mr. Manager LORD. Mr. President, I have sent to the Secretary the request of the managers.

The PRESIDENT *pro tempore*. The managers submit a motion, which will be read.

The Chief Clerk read as follows:

The managers on the part of the House of Representatives request a copy of the plea filed by W. W. Belknap, late Secretary of War, and the House of Representatives desire time until Wednesday, the 19th instant, at one o'clock, to consider what replication to make to the plea of the said W. W. Belknap, late Secretary of War.

The PRESIDENT *pro tempore*. Senators, you have heard the motion of the managers. Those who concur will say ay; those who nonconcur will say no, [putting the question.] The ayes have it; the Senate so orders.

The Chair will ask the gentlemen counsel for the respondent if they will be ready to proceed at the time named in the motion submitted by the managers?

Mr. CARPENTER. That will depend entirely upon what the managers do. We cannot anticipate. If they do what we suppose they will do, we shall be ready. If not, we shall have to consider what we will do next.

The PRESIDENT *pro tempore*. Have the managers on the part of the House of Representatives anything further to propose?

Mr. Manager LORD. We have nothing further to propose at this time. With the leave of the Senate we beg permission to retire.

The PRESIDENT *pro tempore*. Leave is granted. Have counsel for the respondent anything further to propose?

Mr. CARPENTER. Nothing, Mr. President.

The managers and counsel thereupon withdrew.

The PRESIDENT *pro tempore*. What is the pleasure of the Senate?

Mr. EDMUNDS. I move that the Senate sitting for the trial of the impeachment adjourn until Wednesday next, at half past twelve o'clock.

The motion was agreed to; and the Senate sitting for the trial of the impeachment adjourned to Wednesday, the 19th instant, at twelve o'clock and thirty minutes p. m.

WEDNESDAY, *April* 19, 1876.

The PRESIDENT *pro tempore*. The hour of twelve o'clock and thirty minutes having arrived, according to the rules the legislative and executive business of the Senate will be suspended, and the Senate will proceed to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War. The Sergeant-at-Arms will open the session by proclamation.

The SERGEANT-AT-ARMS. Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The respondent appeared with his counsel, Messrs. Black, Blair, and Carpenter.

The PRESIDENT *pro tempore*. The Chair observes that the managers are not present. If there be no objection, the Secretary will inform the managers, before the minutes are read, that the Senate is ready for the trial; pending which, if there be no objection, the Secretary will call the roll of Senators who were heretofore absent and have not been sworn.

The Chief Clerk proceeded to call the names of the Senators who have not been heretofore sworn; and the President *pro tempore* administered the oath to Senators ENGLISH and PATTERSON, a law having been passed providing for the administration of oaths by the presiding officer of the Senate.

At twelve o'clock and forty-five minutes p. m., Mr. G. M. ADAMS, Clerk of the House of Representatives, appeared below the bar and delivered the following message:

Mr. President, I am directed by the House of Representatives to inform the Senate that the House of Representatives have adopted a replication to the plea of William W. Belknap, late Secretary of War, to the articles of impeachment exhibited against him, and that the same will be presented to the Senate by the managers on the part of the House.

The PRESIDENT *pro tempore*. The Senate is now ready to receive the managers.

At twelve o'clock and fifty-two minutes p. m. the Sergeant-at-Arms announced the managers of the impeachment on the part of the House of Representatives.

The PRESIDENT *pro tempore*. The Sergeant-at-Arms will conduct the managers to the seats prepared for them within the bar of the Senate.

The managers (with the exception of Mr. KNOTT, who was not present) were conducted to the seats assigned them.

The PRESIDENT *pro tempore*. The Secretary will now read the minutes of the last day's proceedings.

The Secretary read the journal of the proceedings of the Senate sitting for the trial of the impeachment of William W. Belknap, of Monday, April 17.

The PRESIDENT *pro tempore*. The message received from the House of Representatives will be read.

The Secretary read as follows:

CONGRESS OF THE UNITED STATES,
IN THE HOUSE OF REPRESENTATIVES,
April 19, 1876.

Resolved, That a message be sent to the Senate by the Clerk of the House, informing the Senate that the House of Representatives has adopted a replication to the plea of William W. Belknap, late Secretary of War, to the articles of impeachment exhibited against him, and that the same will be presented to the Senate by the managers on the part of the House.

Attest:

GEO. M. ADAMS, *Clerk*.

The PRESIDENT *pro tempore*. Gentlemen managers, in accordance with the order of the Senate fixing the hour of one o'clock as the time at which it will hear you, the Senate is now ready to hear you.

Mr. Manager LORD. Mr. President, the House of Representatives having adopted a replication to the plea of William W. Belknap to the jurisdiction of this court, as advised by the resolution just read, the managers are instructed to present the replication to the Senate sitting as a court of impeachment, and to request that the same may be read by the Secretary and filed among the Senate's papers.

The PRESIDENT *pro tempore*. The replication will be read by the Secretary.

The Secretary read as follows:

In the Senate of the United States sitting as a court of impeachment.

THE UNITED STATES OF AMERICA } *vs.* WILLIAM W. BELKNAP.

The replication of the House of Representatives of the United States in their own behalf, and also in the name of the people of the United States, to the plea of William W. Belknap to the articles of impeachment exhibited by them to the Senate against the said William W. Belknap.

The House of Representatives of the United States, prosecuting, on behalf of themselves and the people of the United States, the articles of impeachment exhibited by them to the Senate of the United States against said William W. Belknap, reply to the plea of said William W. Belknap, and say that the matters alleged in the said plea are not sufficient to exempt the said William W. Belknap from answering the said articles of impeachment, because they say that at the time all the acts charged in said articles of impeachment were done and committed, and thence continuously done, to the 2d day of March, A. D. 1876, the said William W. Belknap was Secretary of War of the United States, as in said articles of impeachment averred, and, therefore, that by the Constitution of the United States the House of Representatives had power to prefer the articles of impeachment, and the Senate have full and the sole power to try the same. Wherefore, they demand that the plea aforesaid of the said William W. Belknap be not allowed, but that the said William W. Belknap be required to answer the said articles of impeachment.

II.

The House of Representatives of the United States, so prosecuting in behalf of themselves and the people of the United States the said articles of impeachment exhibited by them to the Senate of the United States against the said William W. Belknap, for a second and further replication to the plea of the said William W. Belknap, say that the matters alleged in the said plea are not sufficient to exempt the said William W. Belknap from answering the said articles of impeachment, because they say that at the time of the commission by the said William W. Belknap of the acts and matters set forth in the said articles of impeachment he, said William W. Belknap, was an officer of the United States, as alleged in the said articles of impeachment; and they say that the said William W. Belknap, after the commission of each one of the acts alleged in the said articles, was and continued to be such officer, as alleged in said articles, until and including the 2d day of March, A. D. 1876, and until the House of Representatives, by its proper committee, had completed its investigation of his official conduct as such officer in regard to the matters and things set forth as official misconduct in the said articles, and the said committee was considering the report it should make to the House of Representatives upon the same, the said Belknap being at the time aware of such investigation and of the evidence taken and of such proposed report.

And the House of Representatives further say that, while its said committee was considering and preparing its said report to the House of Representatives recommending the impeachment of the said William W. Belknap for the matters and things set forth in the said articles, the said William W. Belknap, with full knowledge thereof, resigned his position as such officer on the said 2d day of March, A. D. 1876, with intent to evade the proceedings of impeachment against him. And the House of Representatives resolved to impeach the said William W. Belknap for said matters as in said articles set forth on said 2d day of March, A. D. 1876. And the House of Representatives say that by the Constitution of the United States the House of Representatives had power to prefer said articles of impeachment against the said William W. Belknap, and that the Senate sitting as a court of impeachment has full power to try the same.

Wherefore the House of Representatives demand that the plea aforesaid be not allowed, but that the said William W. Belknap be compelled to answer the said articles of impeachment.

MICHAEL C. KERR,
Speaker of the House of Representatives.

Attest:

GEORGE M. ADAMS,
Clerk of the House of Representatives.

The PRESIDENT *pro tempore*. If there be no objection, the replication will be filed. The Chair hears none. Have the managers anything further to offer?

Mr. Manager LORD. Mr. President, I understand that we have nothing further to do until we hear from the other side.

The PRESIDENT *pro tempore*. Gentlemen of counsel, what have you to offer?

Mr. CARPENTER. Mr. President, Mr. Belknap, the respondent, wishes a copy of the replications which have been filed to his plea in abatement, and for time to consider the same and frame pleadings in reply; and I suggest Monday next as the day, and submit a written motion to that effect.

The PRESIDENT *pro tempore*. The Secretary will read the motion.

The Secretary read as follows:

In the Senate of the United States sitting as a court of impeachment.

THE UNITED STATES OF AMERICA } *vs.* WILLIAM W. BELKNAP. } Upon articles of impeachment presented by the House of Representatives against the said William W. Belknap.

Mr. President, the respondent asks for copies of the replications this day filed by the managers and asks for time until Monday next to frame pleadings to meet the same.

WILLIAM W. BELKNAP.

Mr. EDMUNDS. Mr. President, I wish to offer an order upon this subject in a moment.

The PRESIDENT *pro tempore*. The order will be put in writing and reported.

Mr. Manager LORD. Mr. President, we desire of course to offer all possible indulgence to the other side, and we do not deem that the request for time until next Monday is in itself unreasonable, and yet there are reasons, which need not now be stated, for having this matter hastened as much as is possible. The managers therefore instruct me to ask that the day be fixed on Friday next, instead of Monday next.

Mr. EDMUNDS. Mr. President, I have reduced an order to writing which I submit.

The PRESIDENT *pro tempore*. The order will be read.

The Secretary read as follows:

Ordered, That the respondent file his rejoinder on or before the 24th day of April, instant, and that the House of Representatives file their surrejoinder, if any, on or before the 25th day of April, instant.

Ordered, That the trial proceed on the 27th day of April, instant, at twelve o'clock and thirty minutes afternoon.

Mr. CONKLING. What days are they?

Mr. EDMUNDS. The 24th is Monday; the 25th, Tuesday, and the 27th, the day of trial, Thursday, of next week.

The PRESIDENT *pro tempore*. Senators, you have heard the motion proposed by the Senator from Vermont.

Mr. EDMUNDS. I shall then propose that the Senate sitting for this trial adjourn until the last day named, the 27th instant.

Mr. CARPENTER. Mr. President, I desire to understand that order. The 24th is Monday, as I understand, and the court is not to be in session on that day.

Mr. CONKLING. How will the rejoinder be received?

Mr. EDMUNDS. Let it be filed with the Clerk.

Mr. CARPENTER. Mr. President, we desire not to deal with anything less than the court in our pleadings from beginning to end.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from Vermont.

Mr. EDMUNDS. I will modify it by adding "file and serve on the other party copies," so as to save the necessity of any further order on the subject.

The PRESIDENT *pro tempore*. The Secretary will modify the order accordingly and will report it as modified.

Mr. CARPENTER. Mr. President, I desire to suggest to the Senate that we cannot serve any papers on the other side. We have no standing in the House of Representatives. The courtesy that the Senate has extended to us to be here has not been extended by the House. I do not see how we can serve any papers on the House. We cannot get in.

Mr. CONKLING. Mr. President, I move to amend the order so as to provide that the papers referred to shall be filed with the Secretary, and that he deliver copies to either side promptly on application.

The PRESIDENT *pro tempore*. The Secretary will commit the amendment of the Senator from New York to writing.

Mr. Manager HOAR. Mr. President, I respectfully suggest, at the request of my associates, that we do not understand in what position

the House of Representatives will be placed under that order. Certainly it is not in accordance with their custom to make application to the Secretary of the Senate.

Mr. Manager LORD. I would suggest, Mr. President, as relieving the difficulty, that the Secretary be directed to serve a copy on the Clerk of the House.

Mr. CONKLING. I have no objection, Mr. President, to so modifying my amendment. Let it be that he send copies to the managers on the one side and the counsel on the other, or that he send a copy to the Clerk of the House of Representatives on the one side and to the counsel on the other.

The PRESIDENT *pro tempore*. The Senator from New York modifies his amendment as he has stated. The Secretary will reduce to writing the amendment proposed.

Mr. CARPENTER. Mr. President, we are taken quite by surprise by this order. We have always supposed that no paper could be filed in the court of impeachment except by special leave of the court. Are we to come here on the 24th and file anything we please, orderly or disorderly, in form or out of form, and does that become the basis of the action of the House? I supposed that as in the Supreme Court in the exercise of its original jurisdiction not a paper could be filed in this court without the order of the court when the court should see what the paper was. It seems to me we shall be very likely to get into a jangle in the filing of papers unless we do it in the presence and with the approbation of the court on each paper filed.

The PRESIDENT *pro tempore*. The Secretary will now report the resolution first proposed and then the amendment suggested by the Senator from New York.

The SECRETARY. The order is as follows:

Ordered, That the respondent file his rejoinder on or before the 24th day of April instant, and that the House of Representatives file their surrejoinder, if any, on or before the 25th day of April instant.

It is proposed to be amended so as to read:

Ordered, That the respondent file his rejoinder with the Secretary on or before the 24th day of April instant, who shall deliver a copy thereof to the Clerk of the House of Representatives, and that the House of Representatives file their surrejoinder, if any, on or before the 25th day of April instant, a copy of which shall be delivered by the Secretary to the counsel for the respondent.

Ordered, That the trial proceed on the 27th day of April instant, at twelve o'clock and thirty minutes afternoon.

The PRESIDENT *pro tempore*. The question is on the amendment proposed by the Senator from New York to the motion suggested by the Senator from Vermont.

Mr. EDMUNDS. There is no objection to that. I accept it.

The PRESIDENT *pro tempore*. The order will be so modified; and the question recurs on the order as so modified.

The order as modified was agreed to.

Mr. EDMUNDS. Mr. President, now I move that the Senate sitting for this trial adjourn until the 27th instant, at half past twelve o'clock afternoon.

The motion was agreed to; and the Senate sitting for the trial of the impeachment adjourned until April 27.

THURSDAY, *April* 27, 1876.

The PRESIDENT *pro tempore*. The hour of twelve o'clock and thirty minutes having arrived, the legislative and executive business of the Senate will be suspended and the Senate will now proceed, pursuant to order, to the consideration of the articles of impeachment exhibited by the House of Representatives against W. W. Belknap, late Secretary of War. The Sergeant-at-Arms will make the opening proclamation.

The usual proclamation was made by the Sergeant-at-Arms.

The respondent appeared with his counsel.

The PRESIDENT *pro tempore*. The Secretary will inform the House of Representatives that the Senate is now ready for the trial of the impeachment and that provision has been made for the accommodation of the managers and the House of Representatives in the Senate Chamber.

Mr. EDMUNDS. I understand that the Senator from New Hampshire [Mr. WADLEIGH] was not present when the oaths were administered and is now here.

The PRESIDENT *pro tempore*. The Secretary will call the names of Senators who have not been sworn.

The Chief Clerk proceeded to call the names of the Senators who have not been heretofore sworn, and the President *pro tempore* administered the oath to Senator WADLEIGH.

Mr. WITHERS. Mr. President, I am instructed by my colleague [Mr. JOHNSTON] to state that he is detained from his seat in the Senate by the serious indisposition of a member of his family.

At twelve o'clock and thirty-eight minutes p. m. the Sergeant-at-Arms announced the presence of the managers of the impeachment on the part of the House of Representatives.

The PRESIDENT *pro tempore*. The Sergeant-at-Arms will conduct the managers to the seats provided for them within the bar of the Senate.

The managers were conducted to the seats provided for them

The PRESIDENT *pro tempore*. The minutes of the proceedings of the last trial-day will now be read.

The Secretary read the Journal of the proceedings of the Senate sitting for the trial of the impeachment of W. W. Belknap, of Wednesday, April 19, 1876.

The PRESIDENT *pro tempore*. The Secretary will now read the rejoinder submitted by W. W. Belknap to the replication of the House of Representatives.

The Secretary read the rejoinder, as follows:

In the Senate of the United States sitting as a court of impeachment.

THE UNITED STATES OF AMERICA } Upon articles of impeachment of the House
vs. } of Representatives of the United States of
WILLIAM W. BELKNAP. } America, of high crimes and misdemeanors.

And the said William W. Belknap saith that the replication of the House of Representatives first above pleaded to the said plea of him the said Belknap, and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said House of Representatives to have or maintain impeachment thereof against him, the said Belknap, and that he, the said Belknap, is not bound by law to answer the same.

And this the said defendant is ready to verify. Wherefore, by reason of the insufficiency of the said replication in this behalf, he, the said Belknap, prays judgment if the said House of Representatives ought to have or maintain this impeachment against him, &c.

WM. W. BELKNAP.

In the Senate of the United States sitting as a court of impeachment.

THE UNITED STATES OF AMERICA } Upon articles of impeachment of the House
vs. } of Representatives of the United States of
WILLIAM W. BELKNAP. } America, of high crimes and misdemeanors.

And the said William W. Belknap, as to the second replication of the House of Representatives of the United States, secondly above pleaded, saith that the said House of Representatives ought not, by reason of anything in that replication alleged, to have or maintain the said impeachment against him, the said Belknap, because he says that it is not true, as in that replication alleged, that he, the said Belknap, was Secretary of War of the United States from any time until and including the 2d day of March, A. D. 1876, and of this he, the said Belknap, demands trial according to law.

II.

And the said Belknap further saith, as to the said second replication of the House of Representatives of the United States, secondly above pleaded, that the said House of Representatives ought not, by reason of anything in that replication alleged, to have or maintain the said impeachment against him, the said Belknap, because he saith that it is not true, as in that replication alleged, that he, the said Belknap, was Secretary of War until the said House of Representatives, by any committee of the said House raised or instructed for that purpose, or having any authority from the House of Representatives in that behalf, had investigated the official conduct of him, the said Belknap, as Secretary of War, in regard to the matters and things set forth as official misconduct in the said articles of impeachment; and of this he, the said Belknap, demands trial according to law.

III.

And the said Belknap, as to the said second replication of the said House of Representatives of the United States, secondly above pleaded, further saith that the said House of Representatives ought not, by reason of anything in that replication alleged, to have or maintain the said impeachment against him, the said Belknap, because he says that at the city of Washington, in the District of Columbia, on the 2d day of March, A. D. 1876, at ten o'clock and twenty minutes in the forenoon of that day, he, the said Belknap, resigned the office of Secretary of War, by written resignation under his hand, addressed and delivered to the President of the United States, and the President of the United States then and there accepted the said resignation, by acceptance in writing under his hand, then and there indorsed upon the said written resignation; so that the said Belknap then and there ceased to be Secretary of War of the United States, and since that time he, the said Belknap, has not been an officer of the United States, but has been a private citizen of the United States and of the State of Iowa, as stated by said Belknap in his said plea; and that at the time he, the said Belknap, resigned as aforesaid, and the said resignation was accepted as aforesaid, the said House of Representatives had not taken any proceeding for the investigation or examination of any of the charges set forth in the said articles of impeachment as official misconduct of him, the said Belknap, as Secretary of War; nor had the said House of Representatives raised any committee of the said House, nor directed, nor instructed any committee of the said House to make inquiry or investigation in that behalf.

And this the said Belknap is ready to verify. Wherefore he prays judgment if the said House of Representatives ought to have or maintain the said impeachment against him the said Belknap.

IV.

And the said Belknap, as to the said second replication of the House of Representatives of the United States, secondly above pleaded, further saith that the said House of Representatives of the United States, by reason of anything in that replication alleged, ought not to have or maintain the said impeachment against him the said Belknap, because he says that, when the said House of Representatives took the first proceeding in relation to the impeachment of him, the said Belknap, and when the matter was first mentioned in the said House—that is, in the afternoon of the 2d day of March, A. D. 1876—the said House of Representatives was fully advised and well knew that he, the said Belknap, had before then resigned the said office of Secretary of War, by resignation in writing, under his hand addressed and delivered to the President of the United States, and that the President of the United States had also before that time, as President as aforesaid, accepted the said written resignation, by acceptance in writing, signed by him and indorsed on the said written resignation, and that he, the said Belknap, was not then an officer of the United States, as the facts were.

And this he, the said Belknap, is ready to verify. Wherefore he prays judgment if the said House of Representatives ought to have or maintain the said impeachment against him, the said Belknap.

V.

And the said Belknap, as to the said second replication of the House of Representatives of the United States, secondly above pleaded, further saith that the said House of Representatives of the United States, by reason of anything in that replication alleged, ought not to have or maintain the said impeachment against him, the said Belknap, because he says that, although true it is that a certain committee of the said House, called the Committee on the Expenditures of the War Department, had been pretending to make some inquiry into or investigation of the matters and things set forth in said articles of impeachment as official misconduct of him, the said Belknap, but without any authority from or direction by the House of Representatives in that behalf, yet he, the said Belknap, says that said committee had not completed its said pretended investigation, but was engaged in the examination of witnesses, when said committee was informed that the said Belknap had resigned as Secretary of War, by resignation in writing, under his hand, ad-

dressed and delivered to the President of the United States, and that the President of the United States had accepted the said resignation by acceptance in writing, under his hand, indorsed upon the said written resignation; that said committee received the said information during and before the completion of the said pretended investigation into the alleged facts in that behalf, to wit, at eleven o'clock in the forenoon of the 2d day of March, A. D. 1876, and that thereupon the said committee declared that they, the said committee, had no further duty to perform in the premises.

And this the said Belknap is ready to verify. Wherefore he prays judgment if the said House of Representatives ought to have or maintain the said impeachment against him, the said Belknap.

VI.

And said Belknap as to said second replication of the House of Representatives of the United States, secondly above pleaded, further saith that the said House of Representatives ought not, by anything in that replication alleged, to have or maintain said impeachment against him, said Belknap, because he says that, although true it is that he did resign his position as Secretary of War on the 2d day of March, A. D. 1876, at ten o'clock and twenty minutes in the forenoon of that day, at the city of Washington in the District of Columbia, by a resignation in writing, under his hand, addressed to and then and there delivered to the President of the United States, and the President of the United States did then and there accept said resignation, by acceptance in writing, under his hand, then and there by him indorsed upon said written resignation, nevertheless it is not true, as alleged in that replication, that he, said Belknap, resigned his said position with intent to "*evade*" any proceedings of said House of Representatives to impeach him, said Belknap; but, on the contrary thereof, he avers the fact to be that a standing committee of said House, known as the Committee on the Expenditures of the War Department, without any authority from or direction of said House of Representatives to examine, inquire, or investigate in regard to the matters and things set forth in said articles as official misconduct of him, said Belknap, had examined one Marsh, and he had made a statement to said committee, which said statement, if true, would not support articles of impeachment against him, said Belknap, but which said statement was of such a character in respect to other persons, some of whom had been and one of whom was so nearly connected with him, said Belknap, by domestic ties as greatly to afflict him, said Belknap, and make him willing to secure the suppression of so much of said statement as affected such other persons at any cost to himself, therefore he, said Belknap, proposed to said committee that, if said committee would suppress that part of said statement which related to said other persons, he, said Belknap, though contrary to the truth, would admit the receipt by him, said Belknap, of all the moneys stated by said Marsh to have been received by him from one Evans, mentioned in said statement, and paid over by said Marsh to any other person or persons, but said committee declined to accede to said proposition, and Hon. HIESTER CLYMER, chairman of said committee, then declared to said Belknap that he, said CLYMER, should move in the said House of Representatives, upon the statement of said Marsh, for the impeachment of him, said Belknap, unless the said Belknap should resign his position as Secretary of War before noon of the next day, to wit, March the 2d, A. D. 1876; and, said Belknap regarding this statement of said CLYMER, chairman as aforesaid, as an intimation that he, said Belknap, could, by thus resigning, avoid the affliction inseparable from a protracted trial in a forum which would attract the greatest degree of public attention and the humiliation of availing himself of the defense disclosed in said statement itself which would cast blame upon said other persons, he yielded to the suggestion made by said CLYMER, chairman as aforesaid, believing that the same was made in good faith by the said CLYMER, chairman as aforesaid, and that he, said Belknap, would, by resigning his position as Secretary of War, secure the speedy dismissal of said statement from the public mind, which said statement, though it involved no criminality on his part, was deeply painful to his feelings, and did resign his said position as Secretary of War, as hereinbefore stated, at ten o'clock and twenty minutes in the forenoon of the 2d day of March, A. D. 1876; and at eleven o'clock in the forenoon of the day and year last aforesaid he, said Belknap, caused said committee to be notified of his said resignation and of the acceptance thereof by the President of the United States as aforesaid; all of which was in pursuance and in consequence of the said suggestion so made by said CLYMER; and thereupon said committee declared that they, the said committee, had no further duty to perform in the premises. And he, said Belknap, submits that, while said House of Representatives claims that said CLYMER was acting on its behalf in said pretended examination of said Marsh, said House ought, in honor and in law, to be estopped to deny that said CLYMER was also acting on behalf of said House in suggesting the resignation of him, said Belknap, as aforesaid, and ought not to be heard to complain of a resignation thus induced.

And this he, the said Belknap, is ready to verify. Wherefore he prays judgment if the said House of Representatives ought to have or maintain the impeachment against him, the said Belknap.

WM. W. BELKNAP.

The PRESIDENT *pro tempore*. This rejoinder will be considered duly filed, if there be no objection. The Secretary will now read the surrejoinder of the House of Representatives to the rejoinder of William W. Belknap.

The Secretary read as follows:

In the Senate of the United States sitting as a court of impeachment.

THE UNITED STATES OF AMERICA } By the House of Representatives of the United
vs. States, April 25, 1876.
WILLIAM W. BELKNAP. }

The House of Representatives of the United States, in the name of themselves and of all the people of the United States, say that the said first replication to the plea of the said William W. Belknap to the articles of impeachment exhibited against him as aforesaid, and the matters therein contained, in manner and form as the same are above set forth and stated, are sufficient in law for the said House of Representatives to have and maintain the said articles of impeachment against the said William W. Belknap, and that the Senate sitting as a court of impeachment has jurisdiction to hear, try, and determine the same; and the House of Representatives are ready to verify and prove the same, as the Senate sitting as a court of impeachment shall direct and award: Wherefore, inasmuch as the said William W. Belknap hath not answered the said articles of impeachment or in any manner denied the same, the said House of Representatives, for themselves and for all the people of the United States, pray judgment thereon according to law.

II.

And the said House of Representatives as to the first and second subdivisions of the rejoinder to the second replication of the House of Representatives to the plea of the defendant to the said articles of impeachment, wherein the said defendant demands trial according to law, the said House of Representatives, in behalf of themselves and all the people of the United States, do the like; and as to the third, fourth, fifth, and sixth subdivisions of the rejoinder of the said defendant to the said second replication, they say that the said House of Representatives, by reason of anything by the said defendant in the last-named subdivisions of said rejoinder above alleged, ought not to be barred from having and maintaining the said articles of impeachment against the said defendant, because they say that, reserving to themselves all advantage of exception to the insufficiency of the said subdivisions of said rejoinder to said second replication, they deny each and every averment in said several rejoinders to said second replication contained, or either of them, which denies or traverses the acts and intents charged against said defendant in said second replication, and they re-affirm the truth of the matters stated therein; and this the said House of Representatives pray may be inquired of by the Senate sitting as a court of impeachment.

Wherefore the said House of Representatives, in the name of themselves and of all the people of the United States, pray judgment thereon according to law.

MICHAEL C. KERR,
Speaker of the House of Representatives.
GEO. M. ADAMS,
Clerk of the House of Representatives.

The PRESIDENT *pro tempore*. The surrejoinder will be considered as duly filed also. The Senate sitting for the trial is now ready to hear the parties.

Mr. Manager LORD. Mr. President, I am directed on the part of the managers to make a statement to this court and to request the entry of an order which I will presently send to the Secretary to be read. The respondent has not answered the charges contained in the articles of impeachment.

The pleadings now filed relate only to the question of jurisdiction of the Senate, tendering issues of fact and raising a question of law. The managers deem it the proper mode, and suppose it will be most desirable to the defendant and most convenient to the Senate, to have the evidence given bearing on the question of jurisdiction before the arguments shall be presented on that question; and, therefore, they move that an order be entered which they send to the Secretary to be read.

The PRESIDENT *pro tempore*. The proposed order will be read.

The Secretary read as follows:

In the Senate of the United States sitting as a court of impeachment.

THE UNITED STATES OF AMERICA }
vs.
WILLIAM W. BELKNAP. }

On motion of the managers,

Ordered, That the evidence on the questions pertaining to the plea to the jurisdiction of this court be given before the arguments relating thereto are heard, and if such plea is overruled that the defendant be required to answer the articles of impeachment within two days, and the House of Representatives to reply if they deem it necessary within two days; and that the trial proceed on the next day after the joining of issue.

Mr. Manager LORD. With the permission of the court, Mr. President, I will give the following reasons why we think this order should be entered:

All of the issues of law and fact relate to the question of jurisdiction. It is but a single question, upon which the Senate can make but one decision, and the facts pertaining thereto should be proved before the arguments, so that the questions of law and of fact may be considered and decided at the same time. This is the course in all legal tribunals in which questions of law and fact are decided by the same judge or judges.

Now let me refer to some authorities on this point:

In cases where the jury are to decide on both the law and the fact, a general verdict may be rendered on the whole matter. (Starkie's Law of Libel, page 203.)

In the case of Baylis *vs.* Laurance, 11 Adolphus and Ellis, 920, referred to by Starkie on the same page, it was held that the law was the same in regard to both civil and criminal cases.

The same author, page 580, states:

A jury sworn to try the issue may give the general verdict of guilty or not guilty upon the whole matter put in issue, * * * and shall not be required or directed by the court or judge * * * to find the defendant or defendants guilty merely on the proof of the publication.

When by the Constitution the sole power to try impeachments was conferred upon the Senate without any direction as to the mode of procedure, it must have been intended that the rules governing the House of Lords when sitting as a court of impeachment, so far as applicable, should control the Senate sitting as a court of impeachment.

Mr. Erskine, before the Court of King's Bench, in the case of the Dean of Asaph, in regard to the abolition of the king's court and the distribution of its powers, says:

The barons preserved that supreme superintending jurisdiction which never belonged to the justices, but to themselves only as the *jurors* in the king's court.

And in a note to his argument found in Goodrich's British Eloquence, page 659, it is said:

During a trial before the House of Peers every peer present on the trial has always been judge both of the law and the fact; hence no special verdict can be given on the trial of a peer.

Bouvier, in his Law Dictionary, volume 2, page 540, says:

A special verdict is one by which the facts of the case are put on the record and the law is submitted to the judges.

See also Bacon's Abridgment, Verdict, D, A.

A special finding or verdict is therefore only necessary when the questions of fact are found in one tribunal and the law is applied by another.

But there is a direct authority on this question from a court of impeachment only second in dignity to this high tribunal. The court of impeachment of the State of New York is composed of the president of the senate, who is the lieutenant-governor, of the senators, and of the judges of the court of appeals. In the case of the People of the State of New York against George G. Barnard, then one of the justices of the supreme court, (see volume 1, pages 106–108,) the re-

spondent interposed a plea to the jurisdiction on the ground that the articles of impeachment were not adopted by the assembly by a vote of the majority of all the members elected thereto, as required by the constitution. A replication to the plea was filed that the assembly did impeach the respondent by a vote of a majority of all the members elected thereto. Witnesses were then examined in regard to this question on both sides; counsel were heard for the respondent in support of the plea, and for the prosecution in opposition; after which the president stated that the question before the court was whether the plea of the respondent should be sustained. Upon the decision not to sustain the plea replications were filed, and the trial on the merits proceeded.

This precedent sustains the motion in *this* case more fully for the reason that the respondent in *that* case more than a month before he interposed the plea to the jurisdiction had pleaded to the merits by filing a general answer denying each and every allegation in the articles of impeachment; but discovering a month afterward, as he thought, that the articles of impeachment had not been properly presented, on the ground that a majority of the members elected to the assembly had not concurred therein, he put in a plea to the jurisdiction, and the proceedings were had which I have already stated.

Therefore we submit to this honorable court that the managers by asking the entry of this order have suggested the proper method of trial.

Mr. CARPENTER. Mr. President, I suppose it will be necessary some time in the course of these proceedings to close the issues of fact on this plea to the jurisdiction, and we may as well do it now. I therefore offer, to be filed, the *similiter*, which will close the issues of fact, and ask to have it read.

The PRESIDENT *pro tempore*. The Secretary will read the paper.

The Secretary read as follows:

In the Senate of the United States sitting as a court of impeachment.

THE UNITED STATES OF AMERICA *vs.* WILLIAM W. BELKNAP. } Upon articles of impeachment of the House of Representatives of the United States of America of high crimes and misdemeanors.

And the said Belknap, as to the surrejoinders of said House of Representatives to the third, fourth, fifth, and sixth rejoinders of the said Belknap to the second replication of said House of Representatives above pleaded, whereof said House of Representatives have demanded trial, the said Belknap doth the like.

WILLIAM W. BELKNAP.

The PRESIDENT *pro tempore*. Shall this *similiter* be filed? The Chair hears no objection.

Mr. CARPENTER. Mr. President, I am very happy indeed to find myself supported by the honorable House of Representatives through their managers in what has been for years with me a favorite doctrine, that in all criminal cases the jury were judges of law as well as of fact. I have contended for that strenuously for many years in the courts of law, but, I am bound to confess, without success in a single instance.

Before, however, proceeding to the discussion of the order which has been offered by the House of Representatives as well for the regulation of their side of this case as of ours, we wish to make a motion in the case, which, if granted, will supersede the present adoption of the order asked for by the managers.

Considering the importance of this case and the circumstances which surround us at present, we have concluded to ask the Senate for an adjournment of the further hearing and trial of this matter until the first Monday of December next. We regard this as a very important motion, and we desire to be heard upon it somewhat at length; and we therefore ask that, if the motion should be objected to on the part of the managers, the twentieth rule of this court may be suspended for the purpose of the argument of this question, or the time therein fixed (which is one hour on a side) may be enlarged so as to enable us to present this question fully to the court. I think the court may rely on the counsel for the defendant not wantonly wasting its time. But the matter, in our opinion, is so important that we desire in justice to our client to present it fully to the Senate; and we therefore ask that on the hearing of this motion the time fixed by that rule may be enlarged so as to enable us fully to submit the argument upon our side of the application.

Mr. Manager LORD. Mr. President, the managers object to the postponement requested or to the entry of the order.

Mr. CARPENTER. Then, Mr. President, we ask for an order enlarging the time, under the twentieth rule, for the argument of this motion.

Mr. CONKLING. I inquire whether the motion of the counsel specified any enlarged time or was merely in general that an enlargement be given.

Mr. CARPENTER. It did not specify the time; but I would suggest two hours on a side.

The PRESIDENT *pro tempore*. The managers on the part of the House of Representatives have submitted to Senators for their decision the order which has been read in their hearing. Is the Senate ready for the question?

Mr. EDMUNDS. Mr. President, I think the first question is on the application of the counsel for the respondent.

The PRESIDENT *pro tempore*. That is not in the form of an amendment. Each proposition stands of itself and should be put in the order of submission.

Mr. EDMUNDS. But it is a counter-motion, may it please your honor, to postpone the whole question until the first Monday of December. They desire to be heard upon that, and ask that the Senate enlarge the time to two hours. I think that is the first question.

The PRESIDENT *pro tempore*. The Chair will put the question if desired upon enlarging the time, under Rule 20, for that purpose.

Mr. THURMAN. I suggest, so as to avoid turning everybody out, that the Senate retire to the reception-room provided for the purpose.

Mr. Manager LORD. Will the Senate allow me one moment, Mr. President? The managers desire me more specifically to object to the postponement of the trial or to the enlargement of the time.

Mr. THURMAN. I understand the motion made on behalf of the defendant is to extend the rule so as to allow two hours' argument on the motion made by counsel.

Mr. CARPENTER. Two hours on each side.

Mr. THURMAN. On the motion to continue?

Mr. CARPENTER. Yes, sir.

Mr. THURMAN. I think we had better retire to consider that, and also the order offered by the managers.

The PRESIDENT *pro tempore*. The Senator from Ohio moves that the Senate retire for deliberation.

Mr. CONKLING. Allow me to ask a question for information, which I believe is in order. Am I right in supposing that, if the motion made by counsel for the respondent shall prevail, the effect will be that two hours on each side may be devoted to discussing the motion to postpone, in place of one hour; in other words, that the entire time given to the consideration of this motion may be four hours in place of two hours, as it could be now under the rule?

The PRESIDENT *pro tempore*. So the Chair understands—two hours on each side.

Mr. CONKLING. Then if it is in order I say that I hope the Senate will not retire to consider that mere question.

The PRESIDENT *pro tempore*. The motion is not debatable. The Senator from Ohio moves that the Senate retire for deliberation.

The motion was not agreed to.

The PRESIDENT *pro tempore*. The question is on the motion of the counsel, Mr. Carpenter, that the time fixed by the twentieth rule be extended to two hours on each side, instead of one.

Mr. CAMERON, of Pennsylvania. I hope we shall divide on that question.

Mr. SHERMAN. I renew the motion of my colleague that the Senate retire for deliberation. It is not debatable, but I hope the Senate will retire for deliberation.

Mr. CONKLING. Is that motion in order after it has been voted down?

The PRESIDENT *pro tempore*. The Senate has refused to retire, and the motion is not in order.

Mr. SARGENT. I ask for the yeas and nays on the motion to extend the time.

The yeas and nays were ordered.

Mr. BAYARD. I desire that this question should be stated with more precision than I think it was by the Chair in last putting it to the Senate. The motion of one of the counsel for the respondent in this case was for a suspension of the twentieth rule. The question as put by the Chair, according to my understanding, was that there should be an enlargement of the time from one hour under the present rule to two hours on each side; but I think it should, if passed upon by the Senate, be restricted to the present motion now made on behalf of the respondent, and not become an alteration of the rule and applicable to the discussion of all questions which may arise during this hearing. We had better understand whether this motion is to be restricted to the hearing of the present motion of the defendant, or whether this increase of time is to be extended to all interlocutory motions during the trial of this impeachment.

The PRESIDENT *pro tempore*. The Chair understands that the motion of the counsel, Mr. Carpenter, was to modify this rule, so far as this motion is concerned, so as to enlarge the time to four hours, two hours on each side, instead of, as the rule reads, one hour on each side.

Mr. CONKLING. For this one motion.

Mr. EDMUNDS. I know debate is entirely out of order, but I ask unanimous consent to say one word. The twentieth rule provides for this very case; the time allowed is one hour on each side unless the Senate shall by order extend the time. The substance of the application is that the time be extended to two hours under the rule, and not in suspension of it. The counsel cannot move to suspend the rules of the Senate.

Mr. CARPENTER. The motion as made is for the enlargement of time under Rule 20 to enable us to argue the question. We suggest two hours on each side.

The PRESIDENT *pro tempore*. The question is, Will the Senate enlarge the time to two hours instead of one? on which the yeas and nays have been ordered. The roll will now be called on that question.

The question being taken by yeas and nays, resulted—yeas 48, nays 13; as follows:

YEAS—Messrs. Allison, Anthony, Bayard, Bogy, Boutwell, Burnside, Cameron of Wisconsin, Caperton, Cockrell, Conkling, Conover, Cooper, Cragin, Davis, Dawes, Dennis, Edmunds, Frelinghuysen, Hamilton, Hamlin, Harvey, Ingalls, Jones of Florida, Jones of Nevada, Kelly, Logan, McCreery, McDonald, McMillan, Maxey, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Norwood, Oglesby, Paddock, Patterson, Randolph, Ransom, Robertson, Saulsbury, Sharon, Spencer, Wadleigh, West, Whyte, and Windom—48.

NAYS—Messrs. Booth, Cameron of Pennsylvania, Christiancy, Eaton, Hitchcock, Howe, Key, Merrimon, Sargent, Sherman, Stevenson, Thurman, and Withers—13.
NOT VOTING—Messrs. Bruce, Clayton, Dorsey, English, Ferry, Goldthwaite, Gordon, Kernan, Wallace, and Wright—10.

The PRESIDENT *pro tempore*. The Senate orders the extension of time to two hours on each side.

Mr. Manager LORD. Mr. President, in behalf of the managers, I would inquire whether this application is to be supported by any affidavits. I do not understand that in any court it is proper to postpone merely on the *ipse dixit* of counsel. I suppose that any postponement whatever should be supported by affidavits when the order has been made that the trial proceed to-day. Therefore, I inquire whether the order asked for is to be supported by affidavits? If not, I desire to raise that point of order in the case.

Mr. BLAIR. Mr. President, we have no affidavits. We mean to submit the question on the considerations which we shall address to the Senate. Shall I proceed, Mr. President?

The PRESIDENT *pro tempore*. Counsel will proceed. The Senate will please give attention.

Mr. BLAIR. Mr. President and Senators, the grounds on which the counsel for the defendant in this case feel compelled to ask the postponement of this trial are those which will address themselves to the Senate as a body taking notice of the history of the times.

The first ground upon which we ask this continuance is because of the advanced period of the session, and the limited time which we can therefore be allowed to prepare for this inquiry. It is impossible, I think, for counsel in the time to which the session in its usual course will extend, to do justice to the great question involved in this inquiry. At the threshold you are met by a fundamental constitutional question, the question whether a private citizen is subject to be impeached. We, as the counsel of the accused, have not had the opportunity to investigate that subject as it ought to be investigated, by going to original sources of information upon a matter so grave, and we cannot have that time at this season of the session of the Senate. It would be unjust to this body, it would be unjust to the people of the United States, for us to go into the consideration of so grave an inquiry at this period of the session, with the limited time which you can afford us to prepare for it.

The second ground upon which we place this application for a continuance is, that in the articles and in the presentation which is made here by the managers on the part of the House of Representatives, they ask the liberty to furnish additional articles; and it is a fact of which this body will take notice, as one of the matters of current history, that the committee which presented the charges already presented is proceeding day by day with inquiries to lay the basis for additional articles. From the other end of the Capitol and from the committee in which these inquiries are proceeding we have an outpouring day by day, through the public press, of testimony to prejudice the public mind and this body against the party accused. Are we to have impeachment in broken doses? Is it fair and just that while you are here deliberating upon these articles, the public mind and this body should be affected by incriminations which we have no opportunity to answer? We do not object to that proceeding; we want it to go on; we want this continuation for such an examination to proceed. We want it to go on all summer; and we want everything which can be found and investigated throughout the official life of the accused to be examined in detail and with scrutiny by this committee. If there is any additional charge to be presented, we want an opportunity to meet it squarely, and not to feel the effect indirectly in this trial of having the sluices of calumny opened and pouring in upon us with respect to other matters with no opportunity of defense. I see in the averted countenances of this Senate to the accused that these daily outpourings from the committee-room have affected the minds of Senators toward him before they have heard a syllable of testimony against him.

When this committee shall have closed its examinations, we shall have either the confession that there is nothing more to add to the charges pending here, or, if we have the results of the investigations spread before us in the shape of specific charges, we shall be ready to meet them. In case no more charges are presented here after this investigation, and we are confident it will come to that, we shall have the confession before this body and the country that this man's official life has been ransacked by those now in charge of his Department, who look upon him with no kindly eye, and that there is naught against him except what is embodied in the articles now presented to the Senate. How differently will he then stand here, a man who won his station in the counsels of the President not by manipulating the primaries nor by contributions or material aid in the election, but by gallantry on the field of battle! For this he was raised to his position by the President of the United States. When such a man as that is accused before this body upon these articles, and this calumny-mill is stopped, and he appears before you to answer the specific allegations which are now here with a confession that after the closest scrutiny of his official life nothing else can be alleged against him, this Senate will be very slow to believe on the evidence of a confessed accomplice that he is guilty of the baseness of which he is accused.

But, finally, I appeal to the Senate to postpone the consideration of this question for a third and still stronger reason than any I have submitted; and that is, that from the nature of the charge itself and the circumstances under which it is presented the fair consideration of questions involved in the case will be embarrassed by the political contest now in progress. How can it be otherwise when the trial is to take place before a body consisting of the most active partisans of both parties, one of which seeks to cast the odium heaped upon the defendant upon the other party? That other party, enraged at the imputation, seeks to repel it by surpassing its rival in the severity of its dealing with the offender.

It is no disrespect to this body to call its attention to these facts. It would be a want of respect to it to shrink from speaking the truth for fear of giving offense, even though the object should be to show that the circumstances are such as to incapacitate it at this time from giving that fair and judicial consideration to the constitutional question involved in this case which its importance requires.

Every lawyer knows who practices before the Supreme Court of the United States that that court, though removed from all participation in political affairs, avoids giving its judgment on questions which affect the party politics of the day while the elections are pending. I may mention to the Senate the Dred Scott case, which was argued elaborately before the Supreme Court of the United States in the winter of 1855; but that body refused to mix itself in the politics of the day by deciding that question in anticipation of the election that occurred in 1856, and laid it over until the election had passed, that it might not be said that its decision was influenced by partisanship. If such a course was thought proper by a tribunal so much further removed from partisanship than this body, to secure itself in dealing with great constitutional questions free from party influences, it certainly would not be unbecoming in this body, whose members are all actively engaged on one or the other side in the great battle now going on, to imitate the court in guarding itself from such influence when called upon to establish a precedent restricting the power to impeach a private citizen.

Every Senator can recall many instances where the ablest, the most honest, and the most impartial men have been induced by influences, similar to those which now surround them, to commit the grossest injustice. But I will call your attention to a few facts that have occurred in the history of this case, from the official records, to show this body how the ablest, the purest, and the firmest men have overruled their own deliberate judgment and disregarded their avowed convictions.

The Senate will take notice from the official record that these charges were investigated one day only in the committee, one witness only being examined, that the committee reported the next day to the House, that the previous question was called, and this impeachment put through without debate substantially. One or two of the members of the House, consisting in great part of learned lawyers, protested against the manner in which this business was conducted, and ventured to call attention to the fact that the commentators on the Constitution of the highest repute held that there was no jurisdiction in such a case as this. One of these was one of the managers here now prosecuting this case. He said on that occasion:

> Now, Judge Story, after full discussion, lays down the doctrine that it cannot be done. In England any citizen can be impeached, and therefore the English case of Warren Hastings does not apply. In America no man can be impeached but a civil officer, and when he ceases to be a civil officer he ceases to be within the literal construction of the Constitution.

And yet, notwithstanding this emphatic protest, that able, resolute, and honest man was so overborne that he actually voted against the opinion which he had been bold enough for a moment to proclaim, and no one was found bold enough to withstand the tide, and impeachment was voted unanimously. It was a party necessity. Each party must clear itself from all suspicion of complicity with corruption, and hence it would not do to let even the Constitution stand in the way of prosecuting corruption by impeachment, when it was once proposed in the present morbid state of the public mind.

What harm can result from the postponement we request? No public exigency requires that this proceeding should be forced on at this time. The defendant is not in office; he "has done the State some service," and is at least entitled to a fair trial.

Mr. EDMUNDS. Mr. President, if the counsel making this application have finished their opening, I move that the Senate withdraw for consultation.

The PRESIDENT *pro tempore*. Have the counsel closed their opening?

Mr. BLACK. Mr. President, the counsel have not closed their argument. We supposed that one of the managers on the part of the House of Representatives would now proceed with the argument on their side and that the counsel would follow and close by either Mr. Carpenter or myself.

Mr. EDMUNDS. Mr. President, I repeat that, if the counsel for the respondent have finished their opening of the application, I move that the Senate withdraw for consultation. If counsel have not finished their opening of the application, of course I do not make the motion.

The PRESIDENT *pro tempore*. The Chair put that question, and counsel will please state to the Chair whether they have closed their opening, so that the Chair can communicate the fact to the Senate.

Mr. BLACK. Well, we have not closed our opening. We have not closed the argument which we desire to submit to the Senate before there is any deliberation upon the subject; but we expected one of

the gentleman on the part of the House of Representatives to proceed and state the objections they have to this motion.

Mr. President, if it be the pleasure of the court that we proceed without waiting to hear anything from the other side, we shall go on; otherwise we suppose that the arrangement made between us and the managers will be carried out, and that one of them will now address the court.

Mr. Manager LORD. Mr. President, I will say that this arrangement to which the counsel refers is of course one entirely within the control of the Senate, and under the suggestion made we do not feel at liberty to proceed until the opening on the other side is completed.

Mr. BLACK. Mr. President and Senators, since it seems to be your order, I will state somewhat more fully the ground upon which this motion bases itself; and I will give some of my reasons for believing that it ought to meet with no opposition from any quarter.

The managers and members of the House of Representatives, moved by considerations which they think right and proper, are bent upon the destruction of the citizen at the bar. To that end they have dragged him here and demand his conviction of high crimes and misdemeanors before a body whose general functions, like their own, are purely political. You have put on your judicial robes for the purposes of this particular case; and when this occasion is once overpassed, you will lay them aside as suddenly as you put them on. They have therefore good reason to suppose that here they will meet with all possible sympathy. The demand they make is spoken with a voice potential, for it is backed by your constituents as well as their own; that is to say, by the whole body of the American people. When they say, as they do in their articles of impeachment, that they impeach him in the name of the whole people, they are using no mere formal solemnity, but they are averring a literal fact that is well known to be true.

In these circumstances the duty of the accused is plain enough. It requires him to be, to do, and to suffer whatever you in your wisdom may decree. But duties like that are always reciprocal. If he owes obedience to the laws of his country, the country owes him a fair trial. When I say a fair trial, I do not mean merely an honest trial, for that he will be sure to get, whether he gets it to-day or to-morrow or at some other time; I mean a trial free from all disturbing influences, where everything for him and against him will be weighed with scrupulous accuracy in scales perfectly poised, from which even the dust of the balance will be blown away as carefully as possible.

This case has its intrinsic difficulties, such as the judges of the highest courts might be unwilling to cope with in the face of an adverse public opinion.

At the very threshold of the case you encounter a grave question of constitutional law; new, doubtful, difficult, it must be admitted, because there is great conflict of opinion about it among those who ought to understand it best.

On the part of the managers, doubtless, there will be powerful arguments in favor of the jurisdiction which they have invoked. I do not mean that they will use mere declamation "to split the ears of the groundlings," but strong, weighty, impressive arguments, fit to be addressed to the understanding and conscience of this the most dignified body in the world. On the other hand, I might say that it will be met by us with a demonstration as clear as the light of the sun at noonday. But I do not say so, because I am admonished that he "that girdeth on his harness" must not "boast himself as he that putteth it off."

It is a matter of transcendent importance to you, to the public, to this party, to hundreds of other parties who sooner or later may be in the same situation that this point should be decided exactly right. If you take a jurisdiction which does not belong to you it is a most alarming usurpation of undelegated power. If you have the jurisdiction and refuse to exercise it, it is a gross dereliction of your duty. Of course you can steer your vessel between Scylla and Charybdis with perfect safety if you have calm weather to do it in, but that is a kind of navigation which certainly ought not to be undertaken in the midst of a storm.

After you have reached the conclusion, if you ever do reach it, that you have jurisdiction, then will come the investigation of the merits. Remember, to begin with, that he is innocent. I have a right to say this here and now for the purposes of the present motion. If I had the voice of a thousand trumpets I could not speak it more loudly than I have a right to speak it, because, in the first place, that is the presumption of law; and, secondly, I have not seen any legal, sufficient, or satisfactory evidence of his guilt. Neither have you.

Standing, then, before you in that attitude, as an innocent man accused of an infamous offense, he demands a rigid scrutiny of the evidence against him and a patient hearing of his answer. I am far from saying that the managers will not make out a most formidable case. They have not come here with a mere empty accusation which we can afford to despise. They have not made this assault upon the accused without weapons in their hands which they think will fatally wound him. No Quaker-guns are mounted upon their battery. The artillery leveled upon us is loaded to the muzzle with what kind of ammunition I am not sure that I know just yet. But every fact and circumstance, moral or material, which they are able to produce will be met by a clear and simple though it may be an elaborate explanation. The answer will be satisfactory when it comes, but it is inexpressibly painful to produce it. Rather than bring his real defense before the public, my unfortunate client would suffer anything except the total loss of his reputation. But he has earned a good name by a life-time of well-doing. It is the immediate jewel of his soul, and, like every gentleman who is properly constituted, he dreads the loss of it a thousand times more than death. The House took him at a horrible disadvantage. If that Committee on War Expenditures, which has pursued him with such remorseless activity, had taken him out and shot him in the public square it would have been a visitation of mercy in comparison with what they did do. If they are his mortal enemies, (which I do not believe they are,) let them rejoice, for the day of his calamity is come. He has already suffered as much torture as human nature is able to bear.

Is this a case to be tried before a political body in the midst of a presidential election? Why, the stump and the newspaper will take the jurisdiction out of your hands in spite of all you can do. Conventions and caucuses will make their own decrees in the cause and demand their affirmance here. The tempest of passion, which already frights the nation from its propriety, is rising higher and higher every day, and the thunders of popular condemnation which break over us become louder and louder at every burst. The wrath of the country waxes hotter as it burns, and it threatens not only to consume the accused but to scorch and blister every one who stands up to give him aid and comfort in his adversity.

Can you give him the fair, impartial, and unprejudiced trial to which he is entitled? I answer, *yes*. It is possible to free yourselves from all these disturbing influences. You *can* disregard all political considerations and trample the passions of the hour under your feet. You *can* rise to the loftiest height of judicial virtue and look down with contempt upon the stream of prejudice as it rushes along below you. You *can* throw away the chances of your friends for that high office which makes ambition virtue. You *can* dismiss from your hearts the natural love which all public men have for the pride, pomp, and circumstance of political domination over a great country. You can defy the criticism of your own constituents and all their power. You can look in the omnipotent face of the whole people, and tell them that their evil is not good, a hardship upon you to require that you should. There is no man here, I think, who does not intend to do all this and more. Every Senator believes that he, for his own part, will come up to that heroical standard of judicial virtue. But is there a man among you who believes that the others can do it?

Mr. President and Senators, if we had but one party against us, we could stand it well enough; if one were hostile and the other neutral. This is a case in which all parties, who agree with one another in nothing else, unite in a chorus of execration against a single individual. The democracy, as soon as the accusation was made, remembering its traditional love of everything that is pure and good in government and acting upon its profound hatred for all manner of corruption, broke out into a loud explosion of anger the moment they heard the accusation, without stopping to consider whether it was exactly true or not. The general shout which they sent up shook the whole country from sea to sea, and completely stampeded the party of the Administration. Everywhere they broke from their corrals, snapped their halters, and went wild in scattered confusion. Some rather heavy stock that had never raised a trot before went over the plains on a furious gallop. [Laughter.]

The PRESIDENT *pro tempore*. The Chair will here remind those occupying the floor as well as those in the galleries that applause is entirely out of order.

Mr. BLACK. Mr. President and Senators, there is an institution among us called the Department of Justice. On its seal is the legend, *Qui pro domine justitia sequitur*. It is headed just now by a gentleman renowned for his legal learning and for his love of everything that is just and right. It is his special business to hold the executive head level on subjects of this kind. He heard that his friend, brother, and colleague was accused by a committee—not proved to be guilty, but simply accused. Did he throw the broad ægis of the Constitution and the laws over him to protect him and shield him and save him? No. He resolved on the instant that he would burn with an indignation as fierce as the most virtuous of democrats.

Without warrant, without process of any kind, without an oath, without proof of probable cause, he surrounded him with a body of armed policemen, filled his house with them, put them at the front door, at the back door, in hall, parlor, and kitchen. If you had seen him in that condition you might have supposed him to be the fallen minister of some Turkish despot surrounded by the janizaries of the Sultan and waiting quietly for the bowstring.

When a lawless outrage like this can be perpetrated by the Department of Justice; when the Attorney-General, the special guardian of the law, can be lifted from his feet and carried away by the tide of prejudice, have we not reason to distrust the fairness of politicians in general?

Mr. President, I would make this same appeal for continuance to any court of justice. This is no unjudicial call upon your discretion. It does not imply any imputation upon you

If the judges of the ordinary courts would listen to such a proposition as this, founded as it is upon the facts which have been mentioned, how much more necessary is it that a political or legislative body should be careful how it exercises its power in a case like the present at a time so unpropitious?

Judges suppose themselves to live in an atmosphere above the

reach of public clamor; but the door of a legislative hall cannot be closed upon those influences. Legislators regard it as a virtue to represent their constituents truly, and to gratify them as much as possible. Look at the judicial acts of the English Parliament. The history of impeachments and of bills of pains and penalties, and bills of attainder, which for a long time came in place of impeachments, is the history of the shame and the misfortune of that country. Three-fourths of the judgments, nearly all of them, given in times of political excitement, were reversed by the body that pronounced them.

You know, as everybody knows, that the truest and best men that ever lived have fallen under such proceedings as these. Some of those judgments stand yet to disgrace the age in which they were pronounced. Take, for instance, the case of Floyd in the reign of James I. He was a gentleman, but poor enough to be imprisoned for debt. He made some flippant expression concerning the Elector-Palatine. It excited the intense indignation of divers persons who heard it, and the excitement spread from one to another until at last he was dragged before Parliament. They had no jurisdiction to punish him. His offense was below the competence of a common court; it was no offense at all; it was a mere slighting expression that did no harm and was not intended to harm any human being; but in order to gratify the rage of the populace the two houses of Parliament agreed between them that he should be punished thus: He should be compelled to ride on horseback through the principal thoroughfares of London on two different days without a saddle, with his face to the horse's tail and with the tail in his hand; that on his return from each of these journeys he should stand in the pillory for two hours to be pelted by the mob; that he should be whipped upon his bare back; that he should be branded in the forehead with the letter K, and finally he should be kept in Newgate prison for the whole of his natural life.

That was not done by a set of barbarians. The greatest of that time among them the wisest men of any time, were members of the Parliament that inflicted this outrage upon humanity. Among others was Coke, the father of the common law; and he was carried away by the passion of the multitude in the wickedness.

We have had some cases in this country, not cases in which anything like this which I have recited as having been done there was perpetrated; but here in 1839, or thereabouts, a Mr. Swartwout was charged with being a defaulter to the amount of $1,300,000. He was not; he had never spent or appropriated to his own use any dollar of the public money; but his papers were in a state of utter confusion; he was not able to prove his innocence, and so he ran away incontinently. Everybody believed him to be guilty, including both political parties. Suppose he had been tried before the great men who were members of this body in 1840 in the midst of that exciting presidential election, what earthly chance would he have had of escape? It would have been impossible.

There are other instances which I need not enumerate of strong delusions. Everybody threatens to be excessively angry unless something be done with the gentleman who is now at this bar, and especially our friends in the House of Representatives will be very much excited by any disappointment.

Just at this time the United States are nearly in the condition of one of the Roman cities about the beginning of the second century. The public authorities had sent off to Africa and at very considerable expense they had secured and brought home a lion of great strength and ferocity. Great pleasure, gratification to the people was expected if they could only get a man for the lion, but it seemed for a while as if there might be some disappointment about that. On the eve of the day when the games were to begin somebody caught a man and dragged him before the magistrates, charged with the crime of Christianity. He was convicted. But suppose the judges had refused to take jurisdiction, or, having taken jurisdiction, had acquitted him upon the ground that he was a good pagan, what would have happened to the judges? They themselves would have been thrown to the lion, and the people would have had their sport anyhow.

What do these examples of popular fury, and legislative ferocity in consequence of the popular fury, teach us? History, says Hume, is philosophy teaching by examples. What is the lesson taught us by all the examples we know in the history of this country and of past times? Why this, that when the people rage and imagine a vain thing and demand the sacrifice of a victim against which their wrath is directed, that is the very time that you should not take cognizance of the charge, that you should wait quietly until the times change. It teaches that you should wait, as the prophet Elijah waited when he came out of the cave, until the earthquake ceased to shake the mountain, until the mighty wind had blown past, until the great fire had burned itself out, and then listen as he listened for "the still small voice" that speaks of justice, liberty, law, divine and human.

We have a very recent example which shows that legislative bodies are not infallible, although they are composed of the wisest, virtuousest, discreetest, best men in the world. It is but a few days ago that the House of Representatives took up a man, and without jurisdiction, without paying the slightest attention to his defense, and though he was not guilty, rushed him into prison. That was done, remember, by a House nearly all of whose members had distinguished themselves by their devotion to the great principles of human liberty, *habeas corpus*, and the right of trial by jury. One of them, only two or three weeks afterward, stood up on his feet in the House and confessed that the accusation and punishment were the result of partisan zeal on the one side and partisan timidity on the other. When that thing can be done by a House of Representatives so illustrious and filled with so many great and distinguished men, it surely is not wrong for me to say that possibly the same thing may happen here where distinguished men and great statesmen are equally plenty.

Now, if you will put this off until the gentlemen who are managers get through with the trial which they are conducting against my client behind his back, and until there shall be no further political occasion for convicting him, when there shall be nothing but the ends of justice to answer, you will pronounce then a judgment in the cause which will do you honor and save him from great wrong. In the mean time I beg my friends at the other table not to let their zeal run away with them, not to be troubled, not to fret. The thing will all come right in due time. They shall have their day and their hearing, and they shall get all they want if they are entitled to it. In the mean time it will do them good, I am sure, to sprinkle some cool drops of patience upon their fiery spirits.

Mr. CARPENTER. Mr. President, what is the danger to the State, what is the calamity impending to free institution which this prosecution must be hastened to avert? What great end is to be secured by a final trial on this impeachment at this session that cannot as well be attained by a trial at the next session of the Senate? What is the overwhelming evil this proceeding is to correct? Is any public officer undermining our liberties or using his power to oppress the people, and who is therefore such an enemy to humanity that he must be arrested in his wicked career by an almost instantaneous conviction? No; for no public officer is touched by this proceeding. It contemplates nothing but the infliction of political disabilities upon a private citizen of the State of Iowa.

This is unquestionably a great court, but this can hardly be called a great cause. Congress has been constantly engaged for many years in removing political disabilities resulting from treason; not mere theoretical and constructive treason; not the preaching of a sermon containing tenets not fashionable at court, like that for which a clergyman was once impeached in England; not merely the writing of essays to satisfy the people of the right of rebellion, like that which sent Algernon Sydney to ignominious execution; but treason defiant and organized; treason with uplifted crest and outstretched arm; treason which drenched the land with blood and darkened our homes with mourning. You have been engaged for years in removing political disabilities from men guilty of such treason, quickening them with capacity for political and official life, until they have at last gained possession of the southern wing of this Capitol. And this proceeding is their first signal exercise of authority; and they come to the bar of this court heralded by proclamations and surrounded with pageantry which fills your galleries when nothing is to be done but the filing of a single paper. And all this to fix upon a citizen of Iowa, a Union officer, the disabilities which the generosity of the North has removed from offenders in the South.

There are some incidents of this proceeding, apparently ordered by Providence, to suggest a pause. These articles of impeachment were served upon General Belknap at five o'clock and forty minutes in the afternoon of the 6th day of April, 1876. On the 6th day of April, 1862, at about the same hour, General Belknap was in the fore-front of the line of Union troops who made their last stand and rolled back the confederate forces on the bloody field of Shiloh. The former good character and distinguished services of the respondent may not avail him on the final question of innocence or guilt, but may properly be considered in disposing of this motion, which is addressed to the sound discretion, in some sense the grace and favor, of this honorable court.

There is no necessity for a speedy trial. The public safety is in no way in peril. No officer is to be removed, for no officer is touched by these proceedings. The prospect is not brilliant for his nomination by the President for any office pending these proceedings, and if he were nominated the Senate would probably not confirm him. Therefore no great public interest demands an immediate trial. In the case of Blount's impeachment the trial was had at a session subsequent to that at which the articles were presented. Judge Peck's trial was postponed to a subsequent session on the motion of Mr. Webster. And in this case, whether political disabilities shall or shall not be laid upon General Belknap is not a question of such pressing importance that its determination cannot be postponed to a calmer hour. Not only has General Belknap maintained a good character, but he has rendered important and eminent services to the Republic, and he stands to-day with honorable place in history, with reputation unquestioned save in regard to the transaction now under consideration, testified to only by a single witness, and that witness the feeble tool of one woman bent on the destruction of another.

Every Senator who hears me knows that I am especially estopped to utter one disrespectful word to this body. I have experienced its generous kindness so often that I can never entertain aught but the highest respect for the Senate and the warmest affection for its members; and no one will do me the injustice to suppose that my advocacy of this motion is inspired by any want of confidence in the ability or integrity of this court. But I remember a proceeding in this body some years ago, in which a Senator was on trial, and I happen to know that at that time another Senator, who had been a member of the

committee which reported the case to the Senate and had what was, substantially, a judicial duty to perform in the premises, was in the daily receipt of numerous letters from his warmest friends and leading politicians of his own party at home, assuring him that if he did not do everything in his power to expel the accused he never could be re-elected. The Senator thus warned pursued the course which his convictions dictated, but the predicted consequence was realized.

Of course, I do not know that you, Senators, are daily receiving such letters in regard to this trial. But I should not be astonished to learn that some person, unacquainted with the proprieties of this proceeding, had written a similar letter to some Senators.

The coming presidential campaign is already dawning upon us, and will increase in warmth and interest day by day. It is impossible for this court to sit, amid the excitement of a political canvass, entirely unaffected by political influences; and no harm can come to the public, while the respondent's chances of impartial justice at your hands would be greatly increased by postponement of this trial until the coming political contest shall be settled.

We all know what the next campaign is to be. The democrats, who have been so long out of office, rely upon the watchword "anti-corruption" to win the people to their support. This the republicans must meet by exhibiting greater detestation of corruption than the democrats profess. The democrats can only exhibit their virtue by finding corruption in the republican party to be rebuked, and republicans can exhibit their virtue only by out-Heroding Herod in punishment of whatever corruption democrats may pretend to find. Both parties are therefore interested in making the most of the alleged misconduct of the respondent. The democrats have found nothing, in all their investigations, against any other officer, and nothing against the respondent except the particular matter set out in these articles of impeachment, and that alleged by only one witness, and he durst not remain in the country twenty-four hours after he had testified. The campaign, therefore, must turn upon the guilt or innocence of Belknap, both parties being interested to establish his guilt. He will therefore be made the object of attack from every stump, in every newspaper, and in every hamlet in the land. And the question is, whether this is a favorable time for him to receive a perfectly calm and dispassionate trial.

Consider what has already transpired. A report was made by a committee to the House of Representatives about three o'clock in the afternoon of April 2, 1876. The committee had no authority to make the investigation or the report; but the tenor of the report was so grateful to the House that, without printing the testimony, and under the stress of the previous question, amid a scene of excitement and confusion which the Speaker characterized as "disgraceful disorder," the impeachment was carried by a unanimous vote. It is worthy of remark, as evincing the excitement of the hour, that one of the firmest and ablest lawyers of the House, one of the honorable managers now present, after declaring that the House had no authority to impeach Mr. Belknap, then out of office, was so carried away as to vote in favor of impeachment.

After this remarkable proceeding on the part of the House, the Attorney-General, a mild-mannered gentleman, with a kind heart and high sense of propriety, was so excited by the fear that a democratic House was getting ahead of a republican administration that in open defiance of the Constitution, which declares that "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized," without oath or affirmation establishing probability of guilt and without warrant issued for arrest, issued his *lettre de cachet* to the chief of a band of detectives belonging to the Treasury Department to exercise the strictest *surveillance* over the respondent. And in pursuance of this despotic and void order Belknap's house was surrounded with armed policemen and filled from cellar to garret with these detectives. The Attorney-General had no more authority to seize Belknap's house and imprison him therein than Belknap had to imprison the Attorney-General, and no more authority than had any private citizen to thus imprison them both. And, apart from the motive which inspired it, this proceeding of the Attorney-General is as much more deserving of impeachment than the transaction set out in these articles as the violation of a plain provision of the Constitution in favor of the people's rights is more dangerous to liberty than the violation of a particular penal statute. This proceeding of the Attorney-General, however, is only mentioned to show how political excitement could overcome the prudence of a high executive officer and transform the head of the Department of Justice into a minister of injustice.

Let this trial go over until the political contest shall be ended. The respondent will not attempt to escape; will not, like his accusers, flee into Canada; but will be present whenever this court requires his presence.

My colleague has referred to the case of Swartwout, and it is full of instruction for the present hour. He was accused of unparalleled dishonesty in office. And his supposed dishonesty has given a new word to our language. "Swartwouting" is equivalent to embezzlement and official peculation. He was set upon by pamphlets and speeches, political vituperation and popular denunciation; the press opened upon him like the Russian artillery upon the fated six hundred, and "volleyed and thundered" until Swartwout, in utter consternation, sought safety beyond the seas. There he remained until the presidential campaign was closed, the public mind had resumed its normal state, the storm had subsided, and the uproar ceased. Then he returned, and upon a deliberate and honest settlement of his accounts it was ascertained that, so far from his having been a defaulter, the Government was indebted in a small sum to him.

This lesson ought not to be lost upon the lovers of justice when, in the hour of high political need, a victim is singled out to be pursued to the death—when a citizen is required as a scapegoat for a party.

When we come to consider the final issues in this case, if we ever reach them, then the considerations which we now urge may be unimportant. But upon this question, When shall Belknap be tried? his former good character and honorable public services are properly urged upon the court; for surely such a man should be denied nothing which may secure to him the calmest, most impartial trial. And then, if for the imprudence of others justice can only be appeased by the disgrace of one who has rendered such service and bears such honors, so be it. But let this great act of justice proceed from deliberate judgment, and do not let it stand in our history as an instance of political injustice to crimson the cheeks of our children with shame.

Mr. EDMUNDS. Mr. President, with a possible view of saving time, I move that the Senate withdraw for consultation.

The PRESIDENT *pro tempore*. The Senator from Vermont moves that the Senate now withdraw for deliberation.

A division was called for.

The PRESIDENT *pro tempore*. On the motion to retire the roll-call will proceed, a division being called for.

The question being taken by yeas and nays, resulted—yeas 35, nays 24; as follows:

YEAS—Messrs. Anthony, Bayard, Bogy, Booth, Burnside, Cameron of Wisconsin, Caperton, Christiancy, Cockrell, Conover, Cooper, Cragin, Davis, Eaton, Edmunds, Goldthwaite, Hamilton, Key, McCreery, McDonald, McMillan, Merrimon, Morrill of Vermont, Morton, Norwood, Oglesby, Randolph, Ransom, Robertson, Saulsbury, Sharon, Stevenson, Thurman, Wadleigh, and West—35.

NAYS—Messrs. Allison, Boutwell, Cameron of Pennsylvania, Conkling, Dawes, Dennis, Frelinghuysen, Hamlin, Harvey, Howe, Ingalls, Jones of Florida, Jones of Nevada, Kelly, Logan, Maxey, Mitchell, Morrill of Maine, Patterson, Sargent, Sherman, Spencer, Windom, and Withers—24.

NOT VOTING—Messrs. Bruce, Clayton, Dorsey, English, Ferry, Gordon, Hitchcock, Kernan, Paddock, Wallace, Whyte, and Wright—12.

The PRESIDENT *pro tempore*. The Senate orders a retirement for consultation.

Mr. Manager HOAR. Mr. President, before the Senate retires, I ask its consent to call attention to one other matter, and that is that the Senate will consider whether the rule of parliamentary law which prohibits the discussion in the Senate of what has taken place in the House of Representatives is a rule governing the proceedings of this trial, in order that the managers who represent the House may govern themselves accordingly. I am led to allude to the subject from the fact that one of the learned counsel has been permitted to state that a scene of disorder took place in the other branch of Congress on a certain occasion to which he referred. I do not make any motion upon this subject, but desire to call the attention of the Senate to the matter, that we may understand what our rights and duties are in the premises.

Mr. CARPENTER. Mr. President, in behalf of the defendant we wish to say that before that very important question shall be decided by the Senate we desire to be heard upon it.

The PRESIDENT *pro tempore*. The Senate will now retire.

The Senate, at two o'clock and fifty-five minutes p. m., retired to the conference chamber.

The Senate having been called to order in the conference chamber,

The PRESIDENT *pro tempore* stated the question to be on the motion for continuance submitted by Mr. Carpenter, of counsel for the respondent.

Mr. EDMUNDS moved that the motion of the respondent to postpone the further hearing of the impeachment until the first Monday in December next be denied.

After debate,

Mr. SHERMAN moved to substitute for Mr. EDMUNDS's motion "that the President *pro tempore* ask the managers if they desire to be heard on the pending motion of Mr. Carpenter, of counsel for respondent."

Mr. MERRIMON moved that the Senate return to its Chamber without action; on which motion the question, being taken by yeas and nays, resulted—yeas 30, nays 30; as follows:

YEAS—Messrs. Allison, Bogy, Boutwell, Cameron of Wisconsin, Conkling, Conover, Cragin, Dawes, Dennis, Ferry, Hamlin, Ingalls, Jones of Florida, Jones of Nevada, Logan, Merrimon, Mitchell, Morrill of Maine, Morrill of Vermont, Oglesby, Paddock, Patterson, Ransom, Robertson, Sargent, Sharon, Sherman, Spencer, West, and Windom—30.

NAYS—Messrs. Bayard, Booth, Burnside, Cameron of Pennsylvania, Caperton, Christiancy, Cockrell, Cooper, Davis, Eaton, Edmunds, Goldthwaite, Hamilton, Harvey, Hitchcock, Howe, Kelly, Key, McCreery, McDonald, McMillan, Maxey, Morton, Norwood, Randolph, Saulsbury, Stevenson, Thurman, Wadleigh, and Withers—30.

NOT VOTING—Messrs. Anthony, Bruce, Clayton, Dorsey, English, Frelinghuysen, Gordon, Kernan, Wallace, Whyte, and Wright—11.

So the motion was not agreed to.

The question recurring on the amendment of Mr. SHERMAN, the yeas were 28, and the nays 31; as follows:

YEAS—Messrs. Allison, Bogy, Boutwell, Cameron of Wisconsin, Conover, Cragin, Dawes, Dennis, Ferry, Frelinghuysen, Hamlin, Ingalls, Jones of Florida, Jones of Nevada, Logan, McCreery, Merrimon, Mitchell, Morrill of Maine, Morrill of Vermont, Patterson, Randolph, Ransom, Robertson, Sharon, Sherman, Spencer, and Windom—28.

NAYS—Messrs. Bayard, Booth, Burnside, Cameron of Pennsylvania, Caperton, Christiancy, Cockrell, Cooper, Davis, Eaton, Edmunds, Goldthwaite, Hamilton, Harvey, Hitchcock, Howe, Kelly, Key, McDonald, McMillan, Maxey, Morton, Norwood, Oglesby, Sargent, Saulsbury, Stevenson, Thurman, Wadleigh, West, and Withers—31.

NOT VOTING—Messrs. Anthony, Bruce, Clayton, Conkling, Dorsey, English, Gordon, Kernan, Paddock, Wallace, Whyte, and Wright—12.

So the amendment was rejected.

The question recurring on the motion of Mr. EDMUNDS, the yeas were 59, and the nays 0; as follows:

YEAS—Messrs. Allison, Anthony, Bayard, Bogy, Booth, Boutwell, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Caperton, Christiancy, Cockrell, Conkling, Conover, Cooper, Davis, Dennis, Eaton, Edmunds, Ferry, Frelinghuysen, Goldthwaite, Hamilton, Hamlin, Harvey, Hitchcock, Howe, Ingalls, Jones of Florida, Jones of Nevada, Kelly, Key, Logan, McCreery, McDonald, McMillan, Maxey, Merrimon, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Norwood, Oglesby, Paddock, Patterson, Randolph, Ransom, Robertson, Sargent, Saulsbury, Sherman, Stevenson, Thurman, Wadleigh, West, Whyte, Windom, and Withers—59.

NOT VOTING—Messrs. Bruce, Clayton, Cragin, Dawes, Dorsey, English, Gordon, Kernan, Sharon, Spencer, Wallace, and Wright—12.

So the motion was agreed to.

At four o'clock and thirty-five minutes p. m. the Senate returned to the Senate Chamber, and the President *pro tempore* took the chair.

The PRESIDENT *pro tempore*. The Presiding Officer is directed to state to the counsel for the respondent that their motion is denied. The question now recurs on the motion submitted by the managers on the part of the House of Representatives. Do the counsel on the part of the respondent desire to be heard upon it?

Mr. BLAIR. We wish to be heard on that motion.

Mr. SHERMAN. Let the motion be read.

The PRESIDENT *pro tempore*. The Secretary will report the motion.

The Secretary read as follows:

On motion of the managers,

Ordered, That the evidence on the questions pertaining to the plea to the jurisdiction of this court be given before the arguments relating thereto are heard, and if such plea is overruled, that the defendant be required to answer the articles of impeachment within two days, and the House of Representatives to reply, if they deem it necessary, within two days, and that the trial proceed on the next day after the joining of issue.

The PRESIDENT *pro tempore*. The Senate will now hear the counsel for the respondent.

Mr. BLAIR. Mr. President——

Mr. ANTHONY. Mr. President, if the counsel will give way, I move that the Senate sitting as a court of impeachment adjourn until to-morrow at half past twelve o'clock.

The motion was agreed to; and the Senate sitting for the trial of the impeachment adjourned until to-morrow at half past twelve o'clock.

FRIDAY, *April* 28, 1876.

The PRESIDENT *pro tempore* having announced that the time had arrived for the consideration of the articles of impeachment against William W. Belknap,

The usual proclamation was made by the Sergeant-at-Arms.

The respondent appeared with his counsel, Mr. Blair and Mr. Carpenter.

The PRESIDENT *pro tempore*. The Secretary will notify the House of Representatives that the Senate is now ready to receive the managers and the House, provision being made for their accommodation.

At twelve o'clock and thirty-six minutes p. m. the Sergeant-at-Arms announced the presence of the managers of the impeachment on the part of the House of Representatives, and they were conducted to the seats provided for them.

The Secretary read the journal of the proceedings of the Senate yesterday sitting for the trial of the impeachment.

The PRESIDENT *pro tempore*. The Senate is now ready to proceed with the trial. The Secretary will report the pending motion submitted by the managers on the part of the House of Representatives.

The Secretary read as follows:

In the Senate of the United States, sitting as a court of impeachment.

THE UNITED STATES OF AMERICA } vs. WILLIAM W. BELKNAP. }

On motion of the managers,

Ordered, That the evidence on the questions pertaining to the plea to the jurisdiction of this court be given before the arguments relating thereto are heard, and, if such plea is overruled, that the defendant be required to answer the articles of impeachment within two days, and the House of Representatives to reply, if they deem it necessary, within two days, and that the trial proceed on the next day after the joining of issue.

The PRESIDENT *pro tempore*. Are the managers ready to go on?

Mr. Manager LORD. Mr. President, I think the managers presented yesterday on that question all that they desire to submit at the present time until the other side are heard.

The PRESIDENT *pro tempore*. Do gentlemen of counsel desire to be heard?

Mr. CARPENTER. Mr. President and Senators, the same reason which induced us to move yesterday for a continuance of the trial of this cause until after the coming political campaign induces us now, since the Senate has determined to try this cause at the present term, to hurry it forward as fast as we can before the political furnace becomes heated seven times hotter than its wont. I therefore say to the Senate that we shall ask no unnecessary delay in this case; we shall interpose no dilatory plea or motion which, in our judgment, is not essential to the merits of the case, and shall do everything in our power to speed the trial and terminate it as soon as possible, having due regard to the importance of the cause and to the proper defense of this respondent.

The first part of this order, "That the evidence on the questions pertaining to the plea to the jurisdiction of this court be given before the arguments relating thereto are heard," we have no objection to. It is a matter of total indifference to us what is the order which the Senate may make in that particular. Whether the testimony shall be taken and the argument on the facts and the law in regard to the jurisdiction of the court be heard together, or whether they shall be proceeded with at different times is a matter of indifference to us.

To the residue of the order, however, we do seriously object upon several grounds. In the first place, we object to the managers controlling this case on both sides. We are perfectly willing that they should ask such orders as they please for their own government and their own pleadings; but we object to their fixing or asking any order in regard to our pleadings. This part of the order is:

And if such plea is overruled, that the defendant be required to answer the articles of impeachment within two days.

I suppose that means answer the articles on the merits.

And the House of Representatives to reply, if they deem it necessary, within two days; and that the trial proceed on the next day after the joining of issue.

I submit to this honorable court that a proper reply to the managers of the House in regard to this part of the proposed order would be the famous reply which Coke made to the king: "When the question arises and is debated, I will do what is fit and proper for a judge to do; and further, I decline to pledge myself to your majesty." When this plea to the jurisdiction shall be disposed of, the defendant may demur to the articles of impeachment, or may not, as he shall be advised; and what will be the circumstances of this court, or of the counsel, or even of the managers, who, although numerous, are not incorporated and are still mortal, this court cannot to-day determine. They may not want to make their reply to whatever we may say so speedily as they now think.

In the next place, if the court please, while as I say we shall not attempt to make any delays in this case beyond what are absolutely necessary, the argument of the question of the jurisdiction of this court cannot be made properly on the day indicated in this order. The defendant has been compelled to employ counsel, and the counsel whom he has employed have been actively engaged, were at the time of their retainer, and have been ever since, in other professional employments in which they were previously engaged. The Supreme Court of the United States has been in session all the time and is still in session. Other courts in the States where Judge Black has had engagements have been in session also, and he has been compelled to be absent from Washington most of the time. Mr. Blair has also been engaged in the Supreme Court and in other professional employments. Therefore it has been impossible for us up to the present time to do more in this case than to attend to its current necessities. We have had no opportunity to make any preparation for the argument of what in my belief is the gravest question ever presented to a tribunal in this country, namely, whether this Senate has an undefined criminal jurisdiction over forty million people.

There is another practical difficulty that has been in our way, which was mentioned yesterday, and that is that all the books on the subject are out of the Library being examined, I suppose, by the committees of the House or by Senators, and we have therefore had no opportunity to reach the books which we desire to examine previous to this argument; and every lawyer in the Senate knows that such a question cannot be properly prepared on our side without a thorough examination of the authorities, the matters of law decided in other tribunals, and the history of the proceedings in England from which we have borrowed this procedure.

I wish in this connection to say to the court that we cannot be ready to present our side of this question, and properly present it as the importance of the question requires, present it as is due to this court, due to ourselves, and, above all, due to our client, in less than two weeks. We, therefore ask that this matter may be postponed until two weeks from to-day; and after that, unless in case of sickness or some calamity which cannot be foreseen, I think we shall ask for no other delays except in the necessary preparation of pleadings or otherwise as will be conceded to be entirely proper.

In connection with the request that we shall have two weeks to prepare for this argument, I repeat my assurance that it is not for delay; it is not to waste the time of the court; and it will not have that

effect, for I understand you have some things to do besides hearing this case—I refer to your legislative business—and our only object is to be able to present the question as its importance demands.

Mr. Manager LORD. Mr. President and Senators, I desire to call the attention of this court to the proceedings had on the 17th of the present month. I do not intend in the least to call in question the good faith of the counsel who has just addressed this tribunal, but I may refer to what I am about to refer to, in order to show this court the good faith of the managers in making this motion. On the 17th of the present month this occurred. The Chief Clerk read:

"The managers on the part of the House of Representatives request a copy of the plea filed by W. W. Belknap, late Secretary of War, and the House of Representatives desire time until Wednesday, the 19th instant, at one o'clock, to consider what replication to make to the plea of the said W. W. Belknap, late Secretary of War."

The PRESIDENT *pro tempore*. Senators, you have heard the motion of the managers. Those who concur will say ay; those who non-concur will say no, [putting the question.] The ayes have it; the Senate so orders.

The Chair will ask the gentlemen counsel for the respondent if they will be ready to proceed at the time named in the motion submitted by the managers?

The learned counsel who has just addressed the court answered:

That will depend entirely upon what the managers do. We cannot anticipate. If they do what we suppose they will do, we shall be ready. If not, we shall have to consider what we will do next.

Now, if the court please, this answer of the counsel was supposed to refer to a general replication; in other words, he said in substance to this tribunal that if the managers put in a general replication he would be ready to go on with the argument. At least, so we understood; and it is difficult for me at the present time to give any other possible interpretation. The counsel could not have intended to trifle with this court He could not have said that he would be ready to go on provided we were ready to come in here and abandon this impeachment. Therefore all that he could have intended, in our judgment, was this: "If the managers put in a general replication to the plea of the defendant, then and in that case we shall be ready to go on immediately upon that question."

We did not put in simply a replication relating to the principal question; we put in something more than a general replication, namely, a special replication, and therefore the counsel is not bound to go on under his statement.

But this is the point: The counsel says he wants time to prepare, because the question to be decided by this court is whether it has criminal jurisdiction over forty millions of people. That question would be presented by the general replication, and, if the counsel would have been ready on the 19th day of the present month to argue that question, why is he not ready now?

Let me call the attention of the Senate for a moment to the other questions bearing on this matter, contained in the special replication. In this special replication three issues are tendered. In the first place, the replication affirms that William W. Belknap was in office until and including the 2d day of March—the day upon which he was impeached. We also affirm that the House of Representatives through a proper committee had taken jurisdiction of the case, and that the impeachment proceedings were pending when the defendant resigned. We also affirm that the defendant resigned to avoid the impeachment; and allow me to call the attention of the court, in passing, to the rejoinder of the defendant, in which he substantially admits that he resigned for the purpose of avoiding the impeachment. He gives another reason for it, it is true, than guilt, but no matter, the fact is substantially admitted in his rejoinder that he resigned for the purpose of avoiding this impeachment. Therefore there will be no great difficulty in regard to the question of fact raised on that part of the rejoinder to our replication.

Then, on the second question, the proceedings before the House of Representatives, they are very easily proved; and as to the question of whether he was in office on that particular day, it is a matter of history that he did not resign until the 2d of March, and therefore he was in office on that particular day.

Now, if the court please, the questions relating to these facts: first, the question relating to the defendant's power to evade the Constitution and the punishment of the Constitution by resigning; second, the question relating to dividing a day into fractions; third, the question relating to the proceedings before the House of Representatives; that is to say, the relation of the impeachment to the commencement of the proceedings, and also another question as to the effect of the adoption of those proceedings by the House of Representatives—all these are questions, I say, with which all lawyers are familiar, more or less; and certainly the distinguished counsel on the other side must be familiar with all these questions.

As will be seen, the facts pertaining to these questions are within a very narrow compass, can be easily educed and easily considered. If we understood rightly the suggestions of counsel on yesterday, they claim to be thoroughly familiar, all of them, with what has transpired before the committee of the House and what has transpired in the House of Representatives. However unjustly they stated these facts, however erroneously, nevertheless they will undoubtedly hold on to their present view in regard to them until they are convinced by the evidence; and therefore it is that under these circumstances the managers feel constrained, being ready here to-day with the witnesses, to ask this court to go on with the trial and take the testimony bearing on the question of jurisdiction; and after the testimony is in, it will be in the discretion of the court to grant one, two, three, or more days, or longer time; I mention this number of days as sufficient in my judgment for counsel to prepare; but it will of course be in the discretion of the court to grant such further time as the court may deem proper.

Mr. CARPENTER. Mr. President, I ask permission to say a word in reply to the argument of the honorable manager so far as it relates to me personally. After we had filed our plea, and the managers had asked time to reply, the President inquired of the counsel for the defense if they would be ready to proceed after the managers had filed their replication. To that I replied that if the managers did what we supposed they would, we should be ready to proceed—not proceed to argue any question; not proceed to take testimony; but proceed to file a counter-pleading; and I had then with me (supposing that they would demur to our plea, which stated nothing but facts) a joinder in demurrer. If they had filed their demurrer that day, I should have filed the joinder in demurrer the next moment. My reply simply was that we should be ready to proceed on that day if they did what we supposed they would; that is, if they demurred to our plea we should be ready to join in demurrer. No question was asked as to when we should be ready to proceed with the actual trial.

Everything done here is a proceeding in the trial. When this court by its order directed that the trial should proceed on the 27th, what was intended? Simply that the next step should then be taken. The motion to continue it over this session was a proceeding in the trial. We proceeded with the trial all that day, and are proceeding to-day; but to proceed with the trial and to be ready to argue a particular question, are very different things.

The honorable managers, I suppose, have been investigating this question for weeks. They have had the opportunity to do so, being excused, I suppose, from duty in the House, and allowed to sit in committee during the sittings of the House. They have had weeks to devote to this subject and had the books at hand. We have not; and we have been engaged in other necessary professional employments during this time. If this order is to be passed in this form, and this question is to be argued to-day or to-morrow, it is impossible for us to argue it. The honorable managers might as well ask for an order that we should not be heard at all. Even the Almighty employs human means and instrumentalities to execute His providences. Belknap could not do any better. He has to rely upon mortal men; and, if he is to get a lawyer who will devote his entire time to this case from the day of its inception to its end, he must get a lawyer who has no other case. The lawyers who have no cases are, as a general thing, the lawyers to whom a man in such a case would not want to intrust his interests.

We are not asking, I assure the Senate, for a single moment's delay for the sake of delay. We ask nothing but such time as in a case pending in the Supreme Court under its original jurisdiction not one of the honorable managers would refuse to opposite counsel, as a matter of professional courtesy. Undoubtedly if the honorable manager who has just addressed the Senate was opposed to me in a case under the original jurisdiction of the Supreme Court, a case not under peremptory call, and I should ask him as a courtesy for two weeks to prepare an argument and brief in the case, he would never think of denying it, as I certainly should not to him.

Although this is a great court, and a great case in the estimation of the managers, it is still a lawsuit, and must be tried as other lawsuits, if it is tried at all. And I am astonished that the managers feel bound to deny us a courtesy which I state professionally, upon my honor as a lawyer, is absolutely necessary to enable us to present this question at all as becomes either the court or the cause.

Mr. Manager LORD. Mr. President and Senators, it certainly is the fault of the counsel for respondent, and not the fault of the managers, that we have misapprehended his position; and I apprehend that there was no person in this august court on that day among the hundreds who were here who did not fully understand the counsel when he responded to the question of the court to mean that he would be ready to proceed that day, not by the filing of a mere formal paper which his clerk could draw, but that on that day he would be ready to proceed with the trial. What was the language used? What was the question of the President?

The Chair will ask the gentlemen counsel for the respondent if they will be ready to proceed at the time named in the motion submitted by the managers?

The counsel says he meant he would be ready to proceed to file a paper! Ready to proceed to do a clerk's work! Nobody under heaven understood him so. Of course we are bound to take the explanation of the counsel, but when he so responded he was responsible for saying that which led everybody in this court-room but himself to understand that he would be ready to proceed with the trial, and therefore the managers felt bound on their part to take such action as was necessary for an immediate trial.

Now I apprehend that this is not a question like the case suggested by the counsel; this is not a court in which a manager has a right to extend the courtesy which one who has the supreme control of a case may do at the circuit or in the Supreme Court, to take the illustration of the counsel. But this court proceeds upon its own rules, and the circumstances surrounding this case make it proper that the managers on the part of the House of Representative should urge all reasonable diligence. The House of Representatives was compelled under the evidence to present this impeachment to this high tribunal. There

is no reason for delay. The counsel well knows, much as he is engaged in the courts, extensive as is the legal business which he conducts, that "where there's a will there's a way," and that he can put his will behind this case and say that owing to the august character of this court, and owing to the nature of the charge, and owing to all the circumstances surrounding the case, which I need not detail here, this matter ought to be tried and ended; the House of Representatives should be freed from unnecessary and protracted labor in this matter. The counsel speaks of extended business. The managers who are present, while they wish to submit with all cheerfulness to any order of the court, and while they desire to extend every possible courtesy in their power to the other side, feel, representing the House here under the circumstances to which I have referred and in view of other circumstances which will present themselves to the minds of the Senate, that there is no reason for any delay of this case beyond that which is required not by an absolute necessity but by a reasonable necessity.

If the counsel should present an affidavit showing engagements which he had entered into prior to his engagement in this case, even then this court might say that he ought to make his application to some other tribunal for a postponement. Without disputing in the least his engagements, without having any doubt whatever but that he is engaged every moment of his professional time, we do feel constrained on our part to ask this court, under the circumstances which have been developed in this case and which surround every case of this character, that its order require the defendant to proceed with all due diligence; and we do not think the order we ask is unreasonable in that regard.

The counsel says he does not find books. I would say that all the books I have examined, and I have examined many, with the exception of two or three that are in court on a comparatively preliminary question, were in the law library when I examined them and are there now; and if the managers have any books which the counsel desires, he can have them at any time.

Mr. CONKLING. Mr. President, before coming to the matter of time or delay, I wish to offer an order relating as I think to a more important matter than the simple question of the day on which the trial shall begin.

The PRESIDENT *pro tempore*. The Senator from New York proposes an order which will be read.

The Chief Clerk read as follows:

Ordered, That the Senate proceed first to hear and determine the question whether W. W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office. The motion that testimony be heard touching the exact time of such resignation, and touching the motive and purpose of such resignation, is reserved without prejudice till the question above stated has been considered.

The PRESIDENT *pro tempore*. The question will be upon this motion first.

Mr. CONKLING. It may be that the managers, or the counsel, or both may wish to be heard upon the motion.

The PRESIDENT *pro tempore*. The Chair was about to inquire of the managers if they desired to be heard on this motion.

Mr. Manager LORD. We do.

The PRESIDENT *pro tempore*. The manager will proceed.

Mr. Manager LORD. Mr. President and Senators, it seems to me that under the authorities adduced yesterday such a course of procedure would be protracting the trial and entirely unnecessary. Several authorities were produced yesterday to show that a special finding or verdict is only necessary when the questions of fact are found in one tribunal and the law is applied by another. This question of jurisdiction is a single question, and it ought not to be divided and subdivided. The evidence should be in before the judgment of the court is taken on the question of jurisdiction; and this I understand the other side concede. Very great embarrassment might arise, very great delays might ensue from dividing this question. I cited yesterday an authority in the State of New York, to which I will again call the attention of the Senators, the Barnard case.

The court of impeachment in that State, composed of the president of the senate, the lieutenant-governor, the senators, and the judges of the court of appeals, had precisely this question before them. A plea to the jurisdiction was interposed, as follows:

And the said respondent in his own proper person, and by his counsel, John H. Reynolds and William A. Beach, comes and says that this court ought not to have or take further cognizance of the articles of impeachment, or any or either of them, presented in this court against him, because he says that the said articles of impeachment were not, nor were any nor was either of them, adopted by the assembly of this State by a vote of a majority of all the members elected thereto, as required by section 1 of article 6 of the constitution of this State.

A replication was put in to that plea, asserting—

That it is not true that the articles of impeachment now presented against the said respondent do not appear to be and are not articles of impeachment adopted by the assembly of the State, but that the said articles do appear to be and are articles of impeachment adopted by the said assembly.

Then Edward M. Johnson and Charles R. Dayton were called and sworn on the part of the respondent. Hon. C. P. Vedder and Hon. Thomas G. Alvord were called and sworn on the part of the prosecution, these being respectively members or officers of the house. Counsel then argued the case, Messrs. Beach and Reynolds, of counsel for respondent, and Mr. Van Cott, of counsel for the prosecution.

The president stated that the question before the court was whether the plea of the respondent should be sustained.

Mr. Lewis moved that the chamber be cleared for private consultation.

The president put the question whether the court would agree to said motion, and it was determined in the affirmative.

The president put the question whether the court would sustain said plea of the respondent, and it was determined in the negative, as follows.

Chief Judge Church, of the court of appeals; Judge Allen, also of the court of appeals, and Senator Murphy in that case voted in the affirmative; the other senators in the negative. I refer to this case of The People *vs.* Barnard to show that in a court of impeachment composed of the senators of the State of New York and the judges of the court of appeals of that State the precise order was taken for which we move: the evidence was in before the question of jurisdiction was passed upon. Why should we be driven to one single question when there are three or four, and all of them I apprehend exceedingly important questions in this case? Perhaps in one view it may be *the* question of the case whether the defendant resigned for the purpose of evading this impeachment. Why should we try one question at one time and try another question at another time?

I sincerely hope, on behalf of the managers, that this court will adopt the order proposed by them on this question, changing the time as in its discretion it may deem proper. The first part of the order presented by the managers is concurred in by the defendant, who through his counsel makes no objection to that part of the order.

Mr. CARPENTER. Mr. President and Senators, the pleadings proper in this case consist of the articles of impeachment, the plea to the jurisdiction, and the first replication of the House of Representatives to which there is a demurrer by us and a joinder by the managers. Strictly speaking, that is the only issue that could be made in this case. The honorable managers, however, saw fit, without asking leave, to file two replications, instead of one, to our plea. We of course did not care how fully they went into this question; we were ready to follow them in disregard of technical pleading.

I never heard of a case in a court where a single plea had led to an issue of law and fact or where a declaration or any proceeding whatever was followed by two issues, one of law and one of fact, that the court did not always first dispose of the question of law. That being disposed of, the question of fact may or may not be necessary to be inquired into. While on the part of Mr. Belknap we make no objection to this proceeding, its regularity is a question for the court to determine. It seems to me that the more regular proceeding is that indicated by the order offered by the Senator from New York, that the law of this question should be first settled. If we had been captious about pleading, and had moved the court to strike out this second replication, which is drawn not according to common-law form, but according to the free-and-easy style of the New York code, this court would have stricken it out as having been improperly filed, permission not having been granted to reply double. We did not object because we did not care for forms, and we followed them after their kind in our reply to their pleas. But certainly the course most in harmony with the method pursued in courts of law would be to settle the law upon this point first. If the Senate has no jurisdiction over a man who is not in office at the time the impeachment commences, that ends the question. That is a mere question of law; and we shall contend, of course, that any officer of the Government has a perfect right to resign at any moment and that the motives of a man's resignation cannot affect the legal consequences which follow the act of resignation. The Supreme Court of the United States has held where a citizen who wishes to have a litigation with a citizen of his own State moves into another State for the express purpose of giving the Federal courts jurisdiction, that is no objection to the jurisdiction; that a man may change his residence from one State to another for the purpose of obtaining a footing in a Federal court, as well as he may change it for the purpose of improving his health or his financial condition.

I do not regard the issues made as of any substantial consequence to this case. We care nothing about them. We are willing to try them or not try them, as the court directs. But the question is whether this man was in office at the time he was impeached by the House of Representatives? That is fully presented by the articles, by our plea to the jurisdiction, and by the first, which is the only regular, replication on the part of the House and our demurrer thereto. If the Senate shall be of opinion that none but a person in office can be impeached, of course that ends this proceeding. At all events, the method suggested by the order last offered is the method which would be pursued in a court of law. It will be borne in mind that we interposed the first demurrer, and are therefore entitled to open and close in the argument.

Mr. Manager LORD. Mr. President, I desire to state to the Senators in regard to the evidence itself that it will take but a very brief period to present it. It is principally documentary evidence. The managers do not think that over one hour, certainly not over two, would be consumed in taking the testimony. It does not involve the merits of the case in the least. It is simply evidence that was before the committee, and certain documents from the House of Representatives.

Now it seems to me—Senators will pardon me for repeating perhaps what I have already said at least in part—that it would only create delay to adopt the resolution offered by the honorable Senator, because it involves discussing only the abstract question whether a citizen can be impeached, or whether a citizen who has been in office and is now out of office can be impeached. That is by no means the

only question in this case; and we have authorities to show that a person is not allowed to resign for the mere purpose of evading an impeachment. If the resolution of the honorable Senator should be adopted, and this court should go on and hear arguments upon that one question, that does not end this matter if the decision is adverse to the jurisdiction. The House of Representatives has still a right to be heard on the question whether a man, when his sin finds him out, as is charged in these articles, has the right to resign and defeat the Constitution, defeat the disqualification which the Constitution has provided for the very purpose of protecting the people against themselves. A high officer may commit high crimes and misdemeanors, and on some wave of fanaticism be returned to power. As is charged in this case he may for long years have been receiving bribes and yet be restored to favor. I cannot say what the fact is; in this case I am now speaking of what the articles charge, that for many years the defendant has received bribes, rendering himself in the judgment of the nation, in the judgment of this court, utterly unfit to hold office; and yet when he is confronted with the evidence, for the very purpose of defeating the disqualification of the Constitution, he resigns.

It is said that the sentence of a court can be passed upon him disqualifying him. That is true as the law now stands; but I call the Senators' attention to this position: that the statute may, at any time, be repealed. The defendant in this case might be disqualified by the judgment of a court, and the very next day after that disqualification the statute might be repealed with an enactment that the disqualification be removed; or the President might pardon him, as he could without the statute being repealed. Therefore if that sentence should be pronounced in this case, if there is a case before this court which demands the judgment of disqualification, as the articles of impeachment, if true, most clearly and emphatically show—not leaving it to the favor of the President to pardon him; not leaving it to legislative enactment to free him from the penalties of his crime—then this court ought to hear the whole case, and it seems to me it would be a mere waste of time to hear arguments on this abstract question when it is so closely identified with the other part of the case. If you hold favorably to the position of the House of Representatives on that point, the trial it is true would go on; if you hold adversely to your jurisdiction, then we should have to institute another trial upon the second replication.

The counsel criticises somewhat this replication and speaks of it as belonging to the New York practice. No matter what practice it belongs to, in putting in that replication the House of Representatives simply did its duty and only its duty. What would be thought by the forty millions of people to whom the learned counsel just referred if the managers on the part of the House had neglected to bring before this body these facts; should have neglected to aver what we believe to be true, and what the respondent by his rejoinder has confessed to be true, that he resigned for the very purpose of escaping this impeachment—not, as he says, because he is guilty, but to save a laceration of his feelings? No matter what his motive, the fact stands confessed on this record that he resigned for the purpose of escaping impeachment, the impeachment provided by the Constitution and the disqualification provided by the Constitution. What would those forty millions of people to whom the learned counsel so eloquently referred think of us if we had allowed that fact to go without notice?

And then again we have authorities from a court as high as the court of appeals of the State of New York, authorities in England, many authorities, showing that the other point, whether he was in office until and including the 2d day of March, is a most important question. There is an issue also in regard to the proceedings in the House of Representatives before its committee. We allege that that committee had properly entertained jurisdiction of this case before Mr. Belknap resigned, and we affirm that when the House impeached him that impeachment related back to the commencement of the proceedings. The learned counsel on the other side, understanding the force of this position, denies in his rejoinder that that committee had any authority to inquire into these facts. I repeat the defendant denies that that committee had any authority whatever to entertain any proceeding against the defendant. Is not this an important issue? Do not the lawyers in this court, now judges, remember enough of the doctrine of relation to know that when that impeachment was made it related back to the commencement of the proceedings? Therefore, it being affirmed on the other side as a matter of defense that that committee had no jurisdiction whatever, that the House had in no manner authorized it to institute these proceedings, is not that an important fact to bring before this court?

I close, Senators, by saying that this question of jurisdiction cannot be subdivided. It is but a single question, and this court ought to pass upon it but once. I repeat that under the resolution presented by the honorable Senator this court may be called upon to pass on the question of jurisdiction twice. This should not be done. Therefore the managers submit that the order asked for by them should be granted.

Mr. EDMUNDS. I should like to hear the proposed order read again.

The PRESIDENT *pro tempore*. The Secretary will report the order.

The Secretary read as follows:

Ordered, That the Senate proceed first to hear and determine the question whether W. W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office. The motion that testimony be heard touching the exact time of such resignation, and touching the motive and purpose of such resignation, is reserved without prejudice till the question above stated has been considered.

The PRESIDENT *pro tempore*. Do the counsel for the respondent wish to be heard further?

Mr. CARPENTER. No, your honor; we are willing to submit it.

Mr. THURMAN. Mr. President, if we were in an ordinary court——

The PRESIDENT *pro tempore*. The Chair will remind the Senator from Ohio that the question is not debatable.

Mr. THURMAN. Is it not debatable on these orders?

Mr. CONKLING. I wish it were.

Mr. THURMAN. Then I move that the Senate withdraw.

The PRESIDENT *pro tempore*. The Senator from Ohio moves that the Senate retire for deliberation.

The motion was not agreed to.

Mr. THURMAN. If the Senate will not withdraw, I move to suspend the rules, if it is in order to make that motion.

The PRESIDENT *pro tempore*. That motion is not in order.

Mr. HAMLIN. It can be done by unanimous consent.

The PRESIDENT *pro tempore*. By unanimous consent a rule may be suspended.

Mr. EDMUNDS. I feel obliged to object. I do not think debate is the thing.

The PRESIDENT *pro tempore*. Objection is made by the Senator from Vermont.

Mr. EDMUNDS. I offer an amendment to the order proposed by the Senator from New York. I move to strike out the last paragraph of his order in the following words:

The motion that testimony be heard touching the exact time of such resignation and touching the motive and purpose of such resignation is reserved without prejudice till the question above stated has been considered.

And to insert in lieu thereof:

And that the managers and counsel in such argument discuss the question whether the issues of fact are material.

So as to read:

Ordered, That the Senate proceed first to hear and determine the question whether W. W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office; and that the managers and counsel in such argument discuss the question whether the issues of fact are material.

The PRESIDENT *pro tempore*. Do the managers desire to be heard upon the amendment?

Mr. Manager LORD. I will say on behalf of the managers, Mr President, that they are satisfied with this amendment offered by Senator EDMUNDS.

The PRESIDENT *pro tempore*. The Chair will ask the counsel for the respondent if they desire to be heard?

Mr. CARPENTER. We are satisfied to submit the matter.

Mr. HAMLIN. I move that the rules be suspended so far as to permit the Senator from Ohio to speak, under the limitation which is upon the body when we retire—ten minutes.

The PRESIDENT *pro tempore*. The Senator from Vermont has objected. The rule cannot be suspended except by unanimous consent. The motion therefore is not in order.

Mr. HAMLIN. No; objection was made to a general suspension of the rule, but I now ask for a suspension of the rule for ten minutes only in order to allow the Senator from Ohio to speak.

Mr. THURMAN. I hope my friend from Maine will not press that motion. I do not want any privilege on this floor that every other Senator does not possess; but I want this question discussed here or elsewhere.

Mr. HAMLIN. That is what I want.

The PRESIDENT *pro tempore*. The rule cannot be suspended without unanimous consent.

Mr. ANTHONY As business has been transacted since the motion to retire was negatived, I renew the motion that the Senate now withdraw for consultation.

The PRESIDENT *pro tempore*. An amendment having been offered, the Senator from Rhode Island moves that the Senate retire for deliberation.

The motion was agreed to.

The PRESIDENT *pro tempore*. The Senate will now retire.

The Senate, at one o'clock and thirty-three minutes p. m., retired to the conference chamber.

The Senate having been called to order in the conference chamber,

The PRESIDENT *pro tempore* stated that the question was on the amendment proposed by Mr. EDMUNDS to the resolution submitted by Mr. CONKLING.

Mr. THURMAN moved to amend the amendment of Mr. EDMUNDS by adding to the words proposed to be inserted the following:

And whether the matters in support of the jurisdiction alleged by the House of Representatives in the pleadings subsequent to the articles of impeachment can be thus alleged if the same are not averred in said articles.

The amendment to the amendment was agreed to.

The amendment, as amended, was agreed to.

The question recurring on the resolution of Mr. CONKLING, as amended,

Mr. THURMAN moved further to amend the resolution by striking out all after the word "resolved" and in lieu thereof inserting:

That the Senate will first hear the evidence on the issues of fact relating to the question of jurisdiction, and after hearing the same will fix a time for hearing the argument upon the questions of law and fact relating to such jurisdiction.

The amendment was rejected.

The question recurring on the resolution of Mr. CONKLING, as amended, as follows:

Ordered, That the Senate proceed first to hear and determine the question whether W. W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithsanding his resignation of said office; and that the managers and counsel in such argument discuss the question whether the issues of fact are material, and whether the matters in support of the jurisdiction alleged by the House of Representatives in the pleadings subsequent to the articles of impeachment can be thus alleged if the same are not averred in said articles.

The resolution, as amended, was agreed to.

Mr. EDMUNDS submitted the following order for consideration.

Ordered, That the hearing proceed on the 4th day of May, 1876; and that three of the managers and three of the counsel for the respondent be heard thereon, as follows: One counsel for the respondent shall open and shall be followed by one manager, and he shall be followed by one counsel for the respondent, who shall be followed by two managers, and one counsel for the respondent shall close the argument; and that such time be allowed for argument as the managers and counsel may desire.

Mr. ANTHONY moved to amend by striking out "4th" and in lieu thereof inserting "15th."

The amendment was rejected.

Mr. BURNSIDE moved to amend by striking out "4th" and in lieu thereof inserting "16th."

The amendment was rejected.

Mr. HOWE moved to amend by striking out "4th" and in lieu thereof inserting "8th."

The question being taken by yeas and nays, resulted—yeas 23, nays 32; as follows:

YEAS—Messrs. Allison, Anthony, Boutwell, Burnside, Cameron of Wisconsin, Conover, Cooper, Cragin, Ferry, Frelinghuysen, Harvey, Hitchcock, Howe, Ingalls, Jones of Florida, Logan, McMillan, Mitchell, Morrill of Maine, Oglesby, Robertson, Sargent, and Saulsbury—23.

NAYS—Messrs. Bayard, Bogy, Booth, Caperton, Christiancy, Cockrell, Conkling, Davis, Dennis, Eaton, Edmunds, Hamilton, Jones of Nevada, Kelly, Key, McCreery, McDonald, Maxey, Merrimon, Morrill of Vermont, Morton, Norwood, Paddock, Patterson, Randolph, Ransom, Sherman, Thurman, Wadleigh, Wallace, Whyte, and Withers—32.

NOT VOTING—Messrs. Bruce, Cameron of Pennsylvania, Clayton, Dawes, Dorsey, English, Goldthwaite, Gordon, Hamlin, Kernan, Sharon, Spencer, Stevenson, West, Windom, and Wright—16.

So the amendment was rejected.

Mr. CONKLING moved to amend the resolution by striking out all after the word "resolved" and in lieu thereof inserting—

That the hearing proceed on the 4th day of May, 1876, at twelve o'clock and thirty minutes p. m.; that the opening and close of the argument be given to the respondent; that three counsel and three managers may be heard in such order as may be agreed upon between themselves; and that such time be allowed for argument as the managers and counsel may desire.

After debate,

The amendment was agreed to.

The resolution of Mr. EDMUNDS, as amended, was then agreed to.

On motion of Mr. SARGENT, the Senate resolved to return to its Chamber.

At four o'clock and forty minutes p. m. the Senate returned to the Senate Chamber, and the President *pro tempore* took the chair.

The PRESIDENT *pro tempore*. The Presiding Officer is directed to state to the parties that the Senate have made several orders, which will now be reported by the Secretary.

The CHIEF CLERK. The first order is as follows:

Ordered, That the Senate proceed first to hear and determine the question whether W. W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office; and that the managers and counsel in such argument discuss the question whether the issues of fact are material and whether the matters in support of the jurisdiction alleged by the House of Representatives in the pleadings subsequent to the articles of impeachment can be thus alleged if the same are not averred in said articles.

The PRESIDENT *pro tempore*. The second order will be read.

The Chief Clerk read as follows:

Ordered, That the hearing proceed on the 4th of May, 1876, at twelve o'clock and thirty minutes p. m.; that the opening and close of the argument be given to the respondent; that three counsel and three managers may be heard in such order as may be agreed on between themselves; and that such time be allowed for argument as the managers and counsel may desire.

Mr. THURMAN. Mr. President, I move that the Senate, sitting for the trial of the articles of impeachment, adjourn to the 4th of May at twelve o'clock and thirty minutes p. m.

Mr. Manager LORD. Will the Senator withdraw that motion for a moment?

Mr. THURMAN. Certainly, I am willing to do so.

The PRESIDENT *pro tempore*. The motion to adjourn is withdrawn.

Mr. Manager LORD. Mr. President, I am desired by the managers to say that we should like to be heard on the question of the right to open and close, and also in regard to the number of managers who shall be allowed to speak.

The PRESIDENT *pro tempore*. What has been read is an order of the Senate. Does the Senator from Ohio renew his motion that the Senate sitting for the trial of the impeachment adjourn to the time named?

Mr. ANTHONY. Is there not any way of reaching what the managers propose?

The PRESIDENT *pro tempore*. Does the Senator make a motion?

Mr. THURMAN. Mr. President, on this side of the Chamber we did not hear what was the request of the managers.

Mr. ANTHONY. I asked if there was no way of considering whether the request can be granted.

Mr. CRAGIN. The suggestion of the Senator from Ohio was that he did not hear the request of the managers.

Mr. THURMAN. With respect to time, the order is unlimited. Unlimited time is allowed for the argument, both in the opening and the closing.

The PRESIDENT *pro tempore*. One of the managers, Mr. LORD, has asked to be heard on the order just read. That was the request of the manager.

Mr. FRELINGHUYSEN. I would ask the Chair whether there is any objection to hearing the managers now?

The PRESIDENT *pro tempore*. None. They may be heard.

Mr. EDMUNDS. The managers can move to set aside the order, just as they could in court, I think.

The PRESIDENT *pro tempore*. The Chair cannot suggest to the managers. They can proceed.

Mr. CAMERON, of Pennsylvania. Mr. President, had we better not adjourn and meet to-morrow?

Mr. EDMUNDS. No; let us end this matter now.

Mr. CAMERON, of Pennsylvania. It is almost five o'clock.

Mr. EDMUNDS. We can end it in fifteen minutes.

Mr. CAMERON, of Pennsylvania. It would be very unpleasant to interrupt the managers after they begin to speak. We shall hardly get through by a reasonable hour to-day. I move, therefore, that when the Senate adjourns it adjourn to meet on Monday at twelve o'clock.

The PRESIDENT *pro tempore*. We are not in legislative session, and the motion cannot be entertained.

Mr. McDONALD. If a motion was made to rescind the order, would that give the managers the opportunity they desire?

The PRESIDENT *pro tempore*. If that motion is made by a Senator and agreed to by the Senate, the question of the order will be open. It lies with the Senate.

Mr. EDMUNDS. The managers can be heard by unanimous consent.

The PRESIDENT *pro tempore*. The Chair has stated that the managers will be heard.

Mr. Manager LORD. Mr. President, I make a motion to rescind the order on the points which I have stated, and desire that Mr. HOAR be heard on the subject.

The PRESIDENT *pro tempore*. The Chair would state to the manager that a motion by him to rescind the order of the Senate would not be in order; but the manager is permitted to address the Senate.

Mr. Manager LORD. I was informed by a Senator that the motion would be in order; but I will put it in any shape the President may suggest.

The PRESIDENT *pro tempore*. The manager, Mr. HOAR, has the floor and is entitled to be heard.

Mr. Manager HOAR. Mr. President and Senators, I had not expected that this question would arise at this moment for discussion; but I believe I can make a very compact and brief statement of what we have to submit.

I understand that the rules of proceedings upon impeachment are not governed by the principles or precedents of ordinary criminal courts. The House of Lords or the Senate sitting as a court of impeachment undoubtedly derives great light in the application of the principles of common justice and of law from the sages of the law; but nevertheless impeachment is a proceeding which stands on its own constitutional ground. It is an investigation into the guilt of great public offenders abusing official trusts, by the legislative bodies of the country where that practice prevails. In that investigation, as everywhere else, those legislative bodies are equals. Neither branch of the American Congress stands as a suitor at the bar of the other; neither branch of the British Parliament stands as a suitor at the bar of the other; but the concurrent judgment of the two branches is necessary to an impeachment, just as the concurrent judgment of the two branches is necessary to an act of legislation. In the English Parliament the House of Commons brings to the bar of the Lords every bill which it passes, and requests the assent of the Lords thereto, just as in the English Parliament the House of Commons brings to the bar of the House of Lords the fact that it has ascertained the guilt of a great public offender in the course of its official duty, and asks the judgment of the House of Lords as to his guilt and his punishment.

It is an absolutely settled principle of right that upon all questions which arise in the trial of an impeachment the House of Commons has the right to reply. It is a principle which has existed in England for four hundred years, which, when the term "impeachment" is used in our Constitution in clothing this body with one of its highest functions, was imported as all the other constitutional attendants of an impeachment were imported, except where they are expressly varied by the Constitution itself.

This question arose in the trial of President Johnson, and with the leave of the Senate I will cite that authority and the English authority on which the Senate then based its action. After a discussion of a question of practice which came up, as to the course of proceeding in the trial, the Chief Justice, then presiding in the Senate, after

the managers for the House had closed what they had to say, inquired of the counsel for the President respondent whether they desired to reply to what had been said by the managers, and the managers representing the House interposed with this suggestion:

Mr. Manager BINGHAM. Mr. President, with all respect touching the suggestion just made by the presiding officer of the Senate, I beg leave to remind the Senate, and I am instructed to do so by my associate managers, that from time immemorial in proceedings of this kind the right of the Commons in England, and of the Representatives of the people in the United States, to close the debate has not been by any rule settled against them. On the contrary, in Lord Melville's case—

And this, I believe, is the last case of impeachment which has taken place in England—

if I may be allowed and pardoned for making reference to it, the last case, I believe, reported in England, Lord Erskine presiding, when the very question was made which has now been submitted by the presiding officer to the Senate, one of the managers of the House of Commons arose in his place and said that he owed it to the Commons to protest against the immemorial usage being denied to the Commons of England to be heard in reply to whatever might be said on behalf of the accused at the bar of the Peers. In that case the language of the manager, Mr. Giles, was:

"My lords, it was not my intention to trouble your lordships with any observations upon the arguments you have heard; and if I now do so, it is only for the sake of insisting upon and maintaining that right which the Commons contend is their acknowledged and undoubted privilege, the right of being heard after the counsel for the defendant has made his observations in reply. It has been invariably admitted when required." (29 State Trials, page 762, 44–46 George III.)

Lord Erskine "responded the right of the Commons to reply was never doubted or disputed."

Following the suggestion of the learned gentleman who has just taken his seat, I believe that when that utterance was made it had been the continued rule in England for nearly five hundred years.

In this tribunal, in the first case of impeachment that ever was tried before the Senate of the United States under the Constitution, (I refer to the case of Blount,) the Senate will see by a reference to it that although the accused had the affirmative of the issue, although he interposed a plea to the jurisdiction, the argument was closed in the case by the manager of the House, Mr. Harper.

In response to that claim, the distinguished and able counsel for the President, who, I need not remind many of the most distinguished members of this body, fought every inch of ground, yielded to the demand; and throughout the President's trial, from that time, the House of Representatives was heard in reply upon every question that arose, whether a question of the admission of evidence, of the proceedings, or the final question, following therein the English precedents for five hundred years and the precedent adopted in the first case of impeachment in the Senate, and acting therein also in accordance with what, so far as I have been able to examine, has been the proceeding in every case of impeachment in a State tribunal in this country.

In addition to these two sources of authority upon this point, I desire for one moment to call the attention of the Senate to the fact that the managers undertake here the affirmative of this issue. It is true that the respondent has interposed what he calls a plea to the jurisdiction, and that the jurisdictional question has been raised by making an issue upon that plea; but that is a matter of form and not of substance. If the counsel for the respondent had seen fit to enter a general plea of "not guilty," the question of the jurisdiction of the Senate to try and convict would have been involved in the final vote upon that question. To show the jurisdiction of the court over the subject-matter of the inquiry is a part of the affimative issue involved in the presentment of articles. So that by the logic of ordinary practice we are brought to the same result as we should be if it were not a question of the prerogative of the House, and the accustomed and well-settled methods of proceeding in impeachment. In the Blount trial, I believe I have stated with sufficient distinctness, the plea being that William Blount was a Senator of the United States and therefore not an impeachable civil officer, and also that he had laid down his office before the proceedings were instituted—upon that issue, which presented simply the question of jurisdiction, the opening and close were with the House.

Mr. EDMUNDS. Mr. President, I move that the Senate sitting for this trial adjourn until half past twelve o'clock, afternoon, of the 4th day of May.

Mr. McDONALD. If the Senator will withdraw the motion——

Mr. EDMUNDS. I withdraw it.

Mr. McDONALD. I desire, Mr. President, to move to reconsider the vote in regard to the order of proceeding in the case.

The PRESIDENT *pro tempore*. The Senator will submit his motion in writing.

Mr. CONKLING. May I inquire of the Senator whether his purpose is to enter the motion now and leave it to stand undetermined until the 4th of May, or to have immediate action upon it now? And if it be not out of order, I will assign as a reason for my inquiry that if the motion to reconsider be entered and left to stand, no gentleman who is to engage in the conduct of this proceeding on either side will understand what is incumbent upon him or to be incumbent upon him when the 4th of May arrives. So I suggest to the Senator that he would hardly make the motion to reconsider and leave it standing, thus untying everything that has been done and leaving both sides in doubt.

Mr. ANTHONY. Mr. President, I submit that the motion of the Senator from Indiana must be to rescind the whole order, not a part of it. The order has been adopted. We cannot reach a part until the whole is placed before the court again.

Mr. CONKLING. This was a separate order. There were two orders.

Mr. ANTHONY. I beg pardon; I thought it was all one order.

The PRESIDENT *pro tempore*. There are two orders. The Senator from Indiana will submit his motion in writing.

Mr. FRELINGHUYSEN. Mr. President——

The PRESIDENT *pro tempore*. The Chair reminds Senators that debate is out of order.

Mr. FRELINGHUYSEN. I do not propose to debate; but a motion was made to adjourn to the 4th day of May, and I was going to ask whether it would not be better that the Senator from Vermont should change his motion and move that we adjourn until Monday next at half past twelve?

The motion of Mr. McDONALD being reduced to writing was read by the Chief Clerk, as follows:

Ordered, That the vote by which the order in regard to the order of discussion of the jurisdictional question was adopted be reconsidered.

Mr. McDONALD. Mr. President, in response to the Senator from New York [Mr. CONKLING] I will say that I have made the motion to reconsider; and of course it is with the Senate whether they will consider it now or at a future time.

Mr. EDMUNDS. Let us dispose of it now.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from Indiana [Mr. McDONALD] just read.

Mr. McDONALD. I ask for the yeas and nays.

The yeas and nays were ordered; and the Secretary called the name of Mr. ALLISON.

Mr. HOWE. Mr. President, I should prefer that the vote would not be taken on this motion at the present moment.

The PRESIDENT *pro tempore*. Debate is not in order.

Mr. HOWE. I move that the Senate sitting as a court of impeachment adjourn until to-morrow at half past twelve o'clock.

Mr. WHYTE. Is it in order to make such a motion while the roll-call is going on?

The PRESIDENT *pro tempore*. There has been no response to the call.

Mr. WHYTE. The first name was called.

The PRESIDENT *pro tempore*. But not responded to. The Senator from Wisconsin [Mr. HOWE] moves that the Senate sitting for the trial of the impeachment adjourn until to-morrow at half past twelve o'clock.

Mr. DAWES. Perhaps the Senator will permit me to make a suggestion. By unanimous consent, the managers were heard on the question of changing this rule. It seems to me that it would be proper to extend the same courtesy to the counsel for the respondent.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from Wisconsin.

Mr. CAMERON, of Pennsylvania. Mr. President——

The PRESIDENT *pro tempore*. Debate is not in order.

Mr. CAMERON, of Pennsylvania. I do not intend to debate; but I rise to a question of order. I think I can move to amend the motion of the Senator from Wisconsin by proposing that we shall adjourn until Monday at twelve o'clock and thirty minutes p. m.

Mr. HOWE. I will withdraw the motion I submitted just now, for the time being, in order that the question raised by the Senator from Massachusetts [Mr. DAWES] may be considered.

Mr. DAWES. I do not know that the counsel have the least desire to be heard; but common courtesy, it seems to me, would demand the extending to them of the same privilege that the Senate has extended to the managers.

The PRESIDENT *pro tempore*. The Senator from Wisconsin withdraws his motion. Do the counsel on the part of the respondent desire to be heard?

Mr. CARPENTER. Mr. President, from the course of the argument of the honorable manager [Mr. HOAR] we are very much in doubt whether we have any concern with this business. It seems to be rather a conference between the two Houses than a proceeding in this trial. We are informed by the honorable manager that we have been tried and convicted in the other end of this Capitol, and that they have simply brought their judgment here for ratification and concurrence; and they are only now investigating the question as to how and in what form the Senate is to concur in the judgment which the House of Representatives has rendered against us. That, of course, is a more question of practice between the two Houses, which we are understood to have no interest in and no right to interfere with.

On the merits of this motion to rescind, twenty-five years' practice has satisfied me that it is always safe to leave a court to vindicate its own order; and when this court, after full deliberation and consultation in private, has made an order, we assume that that order will be adhered to.

In the next place, whatever may be the precedents in the House of Lords in trying an impeachment, we have the authority of the honorable manager himself who has just taken his seat that they are not binding at all in a trial of impeachment under our Constitution. In the debate which took place in the House (if it can be called a debate where nobody was allowed to speak) as to the ordering of the impeachment, the honorable manager himself stated that the British rules were not applicable, and consequently no aid could be drawn from the trial of Warren Hastings. Now I submit that whatever may have been the rule in the trial of impeachments in England this court should make its own rule, and that should be the rule of right and justice.

I deny, as respectfully as a man may deny anything that comes from

a co-ordinate branch of this Congress, that the House appears here in any other attitude than we appear here, a suitor in this cause. Is it possible, where the Constitution says we are to have a trial, and the House of Representatives presents itself here as the accuser, that it is a part of the court; that it is entitled to any favor here that we are not entitled to? The rule uniformly adopted by the courts of law is a rule which the experience of hundreds of years has determined to be wise and proper, and that is the rule which I understand this Senate has ordered for this trial. Is it desired by the honorable managers that the ordinary course of justice should be changed on this trial, that we should be invited to new entertainments, and that we should be borne down here by oppressive precedents in the House of Lords, and especially after the manager himself, with an independence which was all worthy of him, has in his own branch of Congress put aside the authority of the precedents of the House of Lords in impeachment cases?

The PRESIDENT *pro tempore*. The question is on the motion submitted by the Senator from Indiana, [Mr. McDONALD.]

Mr. Manager HOAR. Mr. President, I ask leave to say a word.

The PRESIDENT *pro tempore*. The manager asks to be heard. Is there objection? The Chair hears none.

Mr. Manager HOAR. I desire to say, Mr. President, that the learned counsel has imitated one of his associates in strangely misunderstanding and misapplying some observations which he attributes to me. I do not, however, propose to be drawn into a discussion of what took place in the House of Representatives. The proposition which I made and to which he has undertaken to reply was that the House of Representatives brings to the Senate a charge the truth of which it has ascertained in the course of its public legislative duty. Undoubtedly it has the burden of maintaining that charge and of proving every fact which is involved in it; and undoubtedly the defendant has the full right to every constitutional or legal principle or presumption of innocence which exists anywhere. But the burden and the duty is on us of proving that charge according to the precedents of this Senate and of all senates, according to the precedents of the House of Lords in England sitting as a court of impeachment, and not according to the precedents of police courts or inferior courts of any other kind sitting anywhere. And the precedents of this Senate and of all senates sitting as a court of impeachment have adopted the rule practiced upon in the English House of Lords, from which impeachments come, for five hundred years, that on all questions the party instituting the proceeding and having the burden of proof throughout the whole issue has the right to reply. That is the proposition, and to that proposition no answer whatever has been vouchsafed or suggested by the honorable counsel for the defendant.

The further proposition, to which no reply has been suggested, was that in this particular on this special issue now made up, the precedent of this Senate and of all senates sitting as a court of impeachment, precisely corresponds and agrees with the precedents of all courts whatever, that where a plea to the jurisdiction is interposed and to that plea a demurrer is filed, which—leaving out now this second matter of fact—is the question here, the party demurring has the affirmative and the reply in support of his demurrer.

So that, taking the first issue presented here, the two modes of determing what is the proper course concur and coincide, and if the issue of fact tendered by the House of Representatives affecting the jurisdictional question be to any extent considered by the Senate, it is also clear that upon that issue of fact the party tendering that would be entitled in any court of equity or law to the right to begin and the right to reply.

Mr. EDMUNDS. Mr. President, may I request the Chair to ask the manager to point out to the Senate the demurrer of the House of Representatives to the plea?

Mr. Manager HOAR. I will. It is the first replication:

The House of Representatives of the United States, prosecuting, on behalf of themselves and the people of the United States, the articles of impeachment exhibited by them to the Senate of the United States against said William W. Belknap, reply to the plea of said William W. Belknap, and say that the matters alleged in the said plea are not sufficient to exempt the said William W. Belknap from answering the said articles of impeachment.

And then they merely re-affirm a fact which had been affirmed in the original articles, that he was before that time Secretary of War, which is not a matter denied in the original plea; so that this first proposition is nothing but a demurrer to the plea, though it is called a replication.

I was saying, therefore, that if the second issue of fact be considered by the honorable Senate in any degree the party having the affirmative of that issue of fact is entitled to the right to begin and the right to reply. So, then, the learned counsel for the respondent asks the Senate to overthrow the uniform course of practice in England, and the course of practice settled by itself in the first case in this country, where four of the most distinguished lawyers of the land were employed on the one side and on the other, and admitted and conceded in the trial of the President, as many gentlemen whom I see here very well know.

Mr. HOWE. Mr. President, I now renew my motion that the Senate, sitting as a court of impeachment, adjourn until twelve o'clock and thirty minutes p. m. to-morrow.

Mr. CAMERON, of Pennsylvania. I renew my amendment to the motion of the Senator from Wisconsin.

The PRESIDENT *pro tempore*. The Senator from Pennsylvania will state his amendment to the motion.

Mr. CAMERON, of Pennsylvania. I move that the court now sitting adjourn until Monday at half past twelve o'clock.

The PRESIDENT *pro tempore*. The Senator from Pennsylvania moves, as an amendment to the motion of the Senator from Wisconsin, that the time fixed shall be Monday, instead of to-morrow, at half past twelve o'clock. The question is on the amendment.

The amendment was not agreed to.

The PRESIDENT *pro tempore*. The question recurs on the motion of the Senator from Wisconsin, that the Senate sitting in trial adjourn until to-morrow at half past twelve o'clock.

The motion was not agreed to.

The PRESIDENT *pro tempore*. The question recurs on the motion submitted by the Senator from Indiana, [Mr. McDONALD,] on which the yeas and nays have been ordered.

Mr. HOWE. If it is not too late, I think I shall ask for the yeas and nays on my motion to adjourn. I do not think it is the purpose of the Senate to drive us to a vote on the motion of the Senator from Indiana at the present time.

The PRESIDENT *pro tempore*. The Senator from Wisconsin asks for the yeas and nays on the question. Unless there is objection, the Chair will inquire if there is a second to the demand.

The yeas and nays were ordered; and being taken, resulted—yeas 22, nays 31; as follows:

YEAS—Messrs. Allison, Boutwell, Cameron of Wisconsin, Cooper, Dawes, Ferry, Frelinghuysen, Harvey, Howe, Jones of Nevada, Key, McCreery, McDonald, McMillan, Merrimon, Mitchell, Morrill of Maine, Morrill of Vermont, Oglesby, Saulsbury, Sherman, and Windom—22.

NAYS—Messrs. Anthony, Bayard, Bogy, Booth, Burnside, Cameron of Pennsylvania, Caperton, Christiancy, Conkling, Conover, Davis, Dennis, Eaton, Hamilton, Hitchcock, Ingalls, Jones of Florida, Kelly, Maxey, Norwood, Paddock, Patterson, Randolph, Ransom, Robertson, Sargent, Spencer, Thurman, Wallace, Whyte, and Withers—31.

NOT VOTING—Messrs. Bruce, Clayton, Cockrell, Cragin, Dorsey, Edmunds, English, Goldthwaite, Gordon, Hamlin, Kernan, Logan, Morton, Sharon, Stevenson, Wadleigh, West, and Wright—18.

So the motion was not agreed to.

Mr. CAMERON, of Pennsylvania. I now move that the Senate sitting as a court adjourn till Monday at twelve and a half o'clock.

The PRESIDENT *pro tempore*. The Senate has refused to agree to that motion already.

Mr. CAMERON, of Pennsylvania. This is a new motion, if the Chair please.

The PRESIDENT *pro tempore*. The Senate refused the motion of the Senator prior to the yea and nay vote just taken.

Mr. CAMERON, of Pennsylvania. The question was divided. Mine was an amendment to the motion of the Senator from Wisconsin.

The PRESIDENT *pro tempore*. And it was rejected by the Senate.

Mr. CAMERON, of Pennsylvania. I think I have a right now to make a new motion that the Senate sitting as a court adjourn until Monday at half past twelve o'clock.

Mr. ANTHONY. If the Senator will modify his motion so as to fix the time five minutes later, it will be in order.

Mr. CAMERON, of Pennsylvania. Then I will make it five minutes after that time.

The PRESIDENT *pro tempore*. That motion is in order. The Senator from Pennsylvania moves that the Senate sitting for the trial of the impeachment adjourn until Monday at twelve o'clock and thirty-five minutes p. m.

The motion was agreed to; and the Senate sitting for the trial of the impeachment of W. W. Belknap adjourned until Monday next at twelve o'clock and thirty-five minutes p. m.

MONDAY, *May* 1, 1876.

The PRESIDENT *pro tempore* having announced the arrival of the time to which the Senate sitting for the trial of the impeachment had adjourned,

The usual proclamation was made by the Sergeant-at-Arms.

The respondent appeared with his counsel, Mr. Blair and Mr. Carpenter.

The PRESIDENT *pro tempore*. The Secretary will notify the House of Representatives that the Senate is now ready to receive the managers and the House, provision being made for their accommodation.

The Sergeant-at-Arms announced the presence of the managers of the impeachment on the part of the House of Representatives; and they (with the exception of Mr. McMAHON, who was absent) were conducted to the seats provided for them.

The Secretary read the Journal of the proceedings of the Senate of Friday, April 28, sitting for the trial of the impeachment.

The PRESIDENT *pro tempore*. The Senate is ready to proceed with the trial. The pending motion will be reported, proposed by the Senator from Indiana, [Mr. McDONALD,] upon which the yeas and nays will be taken.

The Secretary read the order of Mr. McDONALD, modified from the form in which it was originally submitted, to read as follows:

Ordered, That the vote by which it was ordered that the respondent be entitled to conclude the argument upon the question of the jurisdiction of the Senate to entertain the articles of impeachment against the respondent be reconsidered.

Mr. EDMUNDS. Mr. President, I feel bound, after what has taken place in the argument, to move that the Senate withdraw for consultation.

Mr. BLAIR. Mr. President, before the motion is put, I should like to be heard for a few moments by the Senate.

The PRESIDENT *pro tempore*. Is there objection? The Chair hears none.

Mr. BLAIR. Mr. President and Senators, when this question was mooted at the last session of this court, I had not been able to give any attention scarcely to the subject, and was therefore wholly unprepared to make any remarks whatever upon it. Since that adjournment, however, I have looked into the matter with such opportunity as the time afforded me would enable me to do, and upon examination of some of the precedents, which I think will be more authoritative than those stated by the managers, I hope that the Senate will not recede from the order it has taken in this matter.

The first to which I will call the attention of the Senate is the case of Barnard, with which the managers have shown their familiarity, having referred to it in connection with this plea in abatement. Throughout that case the rule which obtains in courts of justice was adhered to, that counsel who maintained the affirmative of the issue had the opening and reply upon such issue. I would also say—and I am making my remarks very brief—in regard to the affirmative of the issue that this is substantially a demurrer to the articles, because every lawyer knows that in a proceeding like this the articles themselves must allege all the facts necessary to give the jurisdiction in the case alleged and proved. This court of impeachment is a court of limited jurisdiction under the Constitution, and in every court of that character the facts upon which the jurisdiction rests must appear on the complaint by which the case is initiated and inviting the action of the court.

Now, every party demurring has the opening and closing, and the argument which is addressed to the court on the other side, that, as they have the affirmative of the general issue, therefore they ought to be heard in opening and replying upon all the questions arising in the progress of the case, would with equal propriety give the plaintiff in every other court the reply on all such questions, whether applied to a question of law or a question of fact. But that is not the rule. In this case we demur, and thus say that, assuming all the facts alleged to be true, the House of Representatives has no case. That is an affirmative proposition that no impeachment can be maintained on the facts charged, and therefore we are entitled to the opening and conclusion of the argument.

It is altogether a mistake, also, that this proceeding was ever otherwise considered here or in England as standing upon any different footing in its general principles than any other proceedings at law. Woodeson, in his lecture on the subject of impeachment, (volume 2, page 596,) treats it as a suit. His language is that "the House of Commons, as the grand inquest of the nation, become suitors for penal justice." Wilson in his Parliamentary Law speaks of the articles as analogous to an indictment, and hence the rules of practice ought to conform to those of the courts in analogous circumstances, and if they vary from them in England, it does not follow a practice there which does not conform to the general principles recognized here. We have greatly restricted the impeachment proceeding; it is not the proceeding here as there in many of its essential features.

This is all I think it necessary to say in support of the judgment of the Senate establishing the rule of proceeding under consideration. I premise the honorable chairman of the Judiciary Committee, upon whose motion it was made I believe, has made himself familiar with this subject. I hope I may be allowed to say in conclusion, that as American lawyers are not very familiar with this proceeding of impeachment, for it is very unusual in this country, if the Senate does retire to consider this matter, it will take into consideration the question of giving us a little more time; and I am sure our brethren, the managers, will not oppose it on further consideration. We do not ask it for the purpose of making any display. We want to investigate this subject, so as to save the time of the Senate in presenting it briefly and in an orderly manner; and we can save the time of the Senate, its valuable time at this season of the session, if we are allowed some time to read and digest our reading before discussing this very important constitutional question to be considered.

Mr. Manager LORD. Mr. President——

The PRESIDENT *pro tempore*. Is there objection to the managers being heard? The Chair hears none.

Mr. Manager LORD. Mr. President, on the question of time referred to last by the counsel who has addressed the court, the managers have already said all that they desire to say, and simply announce that we adhere to positions formerly taken.

On the question of the opening and closing of the argument, the managers desire to be further heard through Mr. HOAR, and I will say now, so that I need not rise again, that the managers also desire that four of their number may be allowed to argue the questions now before the court. It will be seen by the orders of this court that there are five principal questions presented—I need not now refer to them—four of them by the pleadings and the fifth by the order of the court, to wit, whether the matters contained in the second replication of the House of Representatives ought not to have been presented in the original articles. These five questions being before us, the managers suggest that four of their number should be allowed to argue them.

Mr. Manager HOAR. Mr. President and Senators, I desire to say a few sentences only in reply to what has fallen from the learned counsel for the respondent and I desire to state exactly what is the fundamental proposition on which we rest the claim which we presented to the Senate on Friday. It is this, that a court of impeachment, a parliamentary process for the investigation of the guilt of great public offenders, has had from time immemorial, both in this country and England, its own rules of evidence, its own rules of pleading, and its own methods of practice, settled by immemorial usage and adopted by our Constitution when it used the word "impeachment" as one of the powers with which the Senate is clothed. Those rules of evidence, practice, and pleading are not the rules which obtain in the courts of the common law, but are other and different rules.

Do not let me be misunderstood or misrepresented when I make this statement. The rules of pleading and of evidence and of practice, which are based upon common right and which secure to a defendant a fair and impartial trial and protection against oppression, the presumption of innocence, all rules of substance, apply here. This court sits to apply in all its proceedings the rules of common justice and of common right, and is the highest court in the country authorized to apply those rules to this class of offenders. But it applies these rules by its own methods. If in any respect a rule of procedure existing in the court of impeachment is less favorable to a defendant at its bar than the process in a criminal court in an analogous case, Senators will remember the immense constitutional equivalent which is given him. He is entitled, for his judges and for his jurors both, to have impaneled seventy-four Senators of the United States, selected by the various States which make up this Republic as the first men in character, in capacity, in knowledge of the Constitution that those various communities present; and he cannot be convicted unless by a two-thirds judgment of the court so made up. In this he finds an equivalent for every possible inconvenience which the application of the rules which prevail in a court of impeachment may cause him.

I speak at this moment only from memory, but I do not understand that the learned counsel correctly states the only American precedent to which he has referred—the case of Barnard. In Barnard's case a plea was interposed to the jurisdiction, in substance the same plea which is interposed here, applying to several of the articles. That plea was argued by itself, and upon that argument the counsel for the State had the opening and the close. In regard to the English precedent, I beg leave respectfully to refer honorable Senators to a report of which Mr. Burke is the author from a committee appointed by the House of Commons to inspect the journals of the Lords with a view of ascertaining the occasion of the great delay which had happened in the trial of Warren Hastings. This inspection and report were made in the seventh year of that trial. Mr. Burke makes in this report a most ample and thorough discussion of the entire procedure in cases of impeachment in Parliament. He begins by considering the matter of pleadings and the matter of evidence and other matters of procedure, and states in the fullest manner the principle upon which the claim of the managers rested. I do not mean to say that he states anything in regard to this particular question of the opening and close. The report is silent upon that particular subject, but he states the doctrine. He begins by saying:

> Your committee finds that the Lords, in matter of appeal or impeachment in Parliament, are not of right obliged to proceed according to the course or rules of the Roman civil law, or by those of the law or usage of any of the inferior courts in Westminster Hall; but by the law and usage of Parliament.

Then he cites various precedents from the earliest times, and finds that always the court proceed according to the law and usage of Parliament. Then he cites Lord Coke:

> As every court of justice hath laws and customs for its direction, some by the common law, some by the civil and canon law, some by peculiar laws and customs, &c., so the high court of Parliament, *suis propriis legibus et consuetudinibus subsistit*. It is by the *lex et consuetudo parliamenti* that all weighty matters in any parliament moved, concerning the peers of the realm, or Commons in Parliament assembled, ought to be determined, adjudged, and discussed by the course of the Parliament, and not by the civil law, nor yet by the common laws of this realm used in more inferior courts.
>
> This is the reason that judges ought not to give any opinion of a matter of Parliament, because it is not to be decided by the common laws, but *secundum legem et consuetudinem parliamenti*; and so the judges in divers Parliaments have confessed.

Then he goes on under the "rule of pleading:"

> Your committee do not find that any rules of pleading as observed in the inferior courts have ever obtained in the proceedings of the high court of Parliament in a cause or matter in which the whole procedure has been within their original jurisdiction. Nor does your committee find that any demurrer or exception, as of false or erroneous pleading, hath been ever admitted to any impeachment in Parliament, as not coming within the form of the pleading; and, although a reservation or protest is made by the defendant—matter of form, as we conceive—"to the generality, uncertainty, and insufficiency of the articles of impeachment," yet no objections have in fact been ever made in any part of the record.

I do not think it is worth while to detain the Senate with reading very full and copious extracts from this report. I will take the liberty of placing the book where it will be reached by Senators when they discuss this question.

Let me say again that it is not claimed that in any particular the rules of pleading, of evidence, or of practice, which as matter of common right and of common justice are essential to giving the defendant a fair trial, to requiring of his accusers the fullest proof and giving him the entire benefit of the presumptions of innocence, do not obtain in this high court; but the law and custom of Parliament have

been adopted with the adoption of impeachment itself, and one of the well-settled methods of practice against which no authority has been cited is that in all matters the House of Commons or the House of Representatives have the right of reply.

The learned counsel has called attention in the second place to the character and form of these pleadings upon the first issue which is made up; and with the leave of the Senate I desire to explain precisely how that stands. The House of Representatives, in the first instance, allege in the original articles:

ART. 3. That said William W. Belknap was Secretary of War of the United States of America before and during the month of October, 1870, and continued in office as such Secretary of War until the 2d day of March, 1876.

Now, if the Senate will be good enough to observe the plea which was put in by the honorable counsel, it is this:

That this honorable court ought not to have or take further cognizance of the said articles of impeachment exhibited and presented against him by the House of Representatives of the United States, because he says that before and at the time when the said House of Representatives ordered and directed that he, the said Belknap, should be impeached at the bar of the Senate, and at the time when the said articles of impeachment were exhibited and presented against him, the said Belknap, by the said House of Representatives, he, the said Belknap, was not, nor hath he since been, nor is he now, an officer of the United States.

In that replication there is an ambiguity. If the respondent had said that at the time of the presentment of the articles of impeachment he was not a civil officer it would have presented the naked question of jurisdiction without ambiguity or difficulty, and the House would have demurred; but he inserts the word "before." That may have one of two meanings. It may amount to an allegation that he was never, before the original articles of impeachment were presented, a civil officer of the United States. I do not say that that astute purpose was in the mind of the counsel who drew the pleading. If we had demurred simply, if we had made a simple demurrer, the respondent might then have come before the Senate and argued that he had responded to the articles that he never was a civil officer of the United States at any time before they were presented, and we should have been left to a discussion upon the verbiage of the article and to the danger of being excluded from court by a blunder in not giving the proper construction to the defendant's language. Accordingly we set up no new matter but we simply re-assign, in regard to the fact which is left doubtful on the expression of the defendant's plea, what we said in our original articles; in other words, we say, "We mean to say that you were a civil officer of the United States until the 2d of March; and therefore, that being the meaning of our original article, your plea presents no legal or proper response." It is a case therefore of a re-assignment or a re-affirmation of a fact originally set forth in a mode in which the meaning of the original allegation cannot be questioned, and saying that therefore, that fact being considered, the plea of the respondent shows no answer in law. Thus we have presented to the Senate in substance an issue made here in this way: a statement of the original articles that the defendant was a civil officer of the United States down to the 2d day of March, re-affirmed in the replication; a statement by the defendant that before these articles were presented he had ceased to be such civil officer; and a statement on the part of the House of Representatives that that last allegation is no defense to the charge; in other words, a simple demurrer to what is pleaded and well pleaded in the original article; and on such demurrer by the invariable rule of courts both of law and equity the party sustaining the demurrer has the affirmative.

Upon the larger question (setting aside now the pleadings and taking the substance of the issue upon the question of jurisdiction) the plaintiff always has the affirmative. If the respondent had contented himself with introducing a naked plea of "not guilty," he could have availed himself of his objection to the jurisdiction upon that plea, and it would have required the judgment of the court to be given against him or in his favor, without setting up the fact at all, because the original articles do not allege that at the time of the presenting of the articles he was a civil officer of the United States.

And it may be proper to say one further word in conclusion. I understand, in accordance, as was suggested in the very significant question put I think by the honorable Senator from New York, that the true rule of pleading in impeachment cases is this: The House of Representatives present articles setting up the substance of the transaction on which they rely, not in the form of an indictment or of a bill in equity or of a civil declaration certain to a certain intent in general, but setting forth the substance of a transaction. It is not necessary to give dates. You may say "on or about the time." It is not necessary to give legal results or intendments. Then the defendant comes in and in his answer either denies the whole matter if there was no such transaction as is set up, or if there was a transaction of the kind but an innocent and not a guilty one, with certain different and other circumstances, he tells the story as he alleges it to be, setting up at the same time all special suggestions of law or of defense of fact on which he relies; and the pleadings are made up in that way by a joinder of issue. I do not think it is in the power of parties by pleadings of fact such as take place in ordinary courts of law to compel the Senate to determine, except in its discretion, several issues of fact in succession. Suppose an issue of fact were made up on this question of jurisdiction, is the Senate to be compelled to lay aside its legislative business and determine that, and then the defendant answer over, perhaps setting up some other matter strictly in bar, and have that determined, and so the Senate put to a trial of half a dozen successive issues of fact? I respectfully submit that that is not the rule, but that the proper method of pleading is the one which I have first stated.

Undoubtedly it would have been very proper that the matter set up in this second replication should have been set up in the original articles; but it is also well settled in matters of impeachment that the House of Representatives has in its discretion the right at any time to file additional articles if it see fit. It is also true that this new matter set up in the second replication has been pleaded to without objection on the part of the defendant; that it is before the Senate as an allegation in the cause presented by the authority of the House; and whether it should or should not have been originally inserted in the articles becomes now of no consequence.

Mr. CONKLING. Mr. President, I should like under the rule, through the Chair, to make an inquiry of the manager now on the floor. I would like to have read from Blount's case, if that was the case to which the manager referred, or from the case of Chase, if that was the case to which he referred on Friday, the passage in the report in which it appears that the Senate held the affirmative to be with the managers, regardless of the nature of the issue, regardless of the question whether they were the propounding party in respect of that particular issue or not.

Mr. Manager HOAR. Mr. President, I desire to express my gratitude to the honorable Senator for putting that question, because it reminds me of what I had meant to say if I was called upon to address the Senate again this morning.

Blount's case was the case to which I referred. In the haste of replying to the learned counsel I used the phrase, "the rule settled by itself for the Senate in the first case which came before them." In point of fact, it appears upon the report that the order of proceeding was settled by the four distinguished counsellors who took part in it by an agreement, and there is no vote or other express action of the Senate to be found; and it was my purpose, on the suggestion of one of my honored associates, to have made that explanation to the Senate at this time, but it passed from my mind. But Blount's case seems to me to be a very significant and important authority, for it is not credible that those four lawyers, four as able lawyers as the bar of the United States afforded at that time, Mr. Jared Ingersoll, Mr. Bayard, Mr. Harper, and Mr. Dallas, would have conceded so important an advantage to the managers on the part of the House of Representatives without any equivalent, unless they had understood the practice to be so.

Mr. CONKLING. That was a demurrer by the House, though.

Mr. Manager HOAR. That was a demurrer by the House to a plea on the question of jurisdiction, so that the Senate, and the Senate without any objection, allowed the practice as settled by the counsel among themselves to be adopted and acted on. It is not, however, strictly accurate to say that the Senate settled the practice.

Mr. EDMUNDS. May I ask (through the Chair) the manager whether the House in the Blount case, being the demurring party, were not entitled on ordinary judicial principles and practice to go forward without relying upon their privilege?

Mr. Manager HOAR. Undoubtedly. Our replication is a copy of the Blount replication.

Mr. McDONALD. I was about to ask if the replication is not a copy of what is termed the demurrer in that case?

Mr. Manager HOAR. It is.

Mr. EDMUNDS. I ask the manager to read the replication in the Blount case and the replication in this case.

Mr. Manager HOAR. I have not here the Blount case.

Mr. COCKRELL. I can furnish the managers with the case if they desire it. [Sending a book to the managers.]

Mr. LOGAN. Before the manager reads that, I desire to ask a question merely to have him give his comments in reference to it. The replication on the part of the House to the first plea of the respondent is claimed by the managers to be a demurrer. Then there is a demurrer by the respondent, and the managers follow with their joinder in demurrer to the demurrer of the respondent. I ask whether by that joinder in demurrer to the respondent they do not waive that which they claim to be their demurrer in the replication to the first plea of the respondent? I should like to hear the manager on that point.

Mr. Manager HOAR. I am not sure that I correctly apprehend the force of the question of the honorable Senator from Illinois; but if I do, with all due respect, I can express my opinion by saying that it refers rather to what the successive steps in the pleading are labeled by the parties, than to what they really amount to. The substance of this issue is this: The House of Representatives say the defendant did certain acts as Secretary of War, and remained Secretary of War until the 2d day of March. The defendant replies, "I was not Secretary of War when you presented your articles, or before," leaving it ambiguous whether he means never before, or that there was a time before when he did not hold the office. In order not to be entangled by that ambiguity, the House of Representatives say, "We mean to assert, as we said before, that you were Secretary of War down to the 2d day of March; and the fact that you have gone out since (which is the only fact, as we understand the pleadings, now newly set up by you) is not a sufficient answer to our original article."

Mr. LOGAN. The question I asked, though, if I can make myself understood, is merely this, boiled down to a point, whether the managers, by joining in demurrer to the demurrer of the respondent to the replication of the managers, do not then make the issue on that demurrer, and waive what they claim as a demurrer on their part to the plea of the respondent?

Mr. Manager HOAR. I do not so understand. I understand that the question which the Senate ought to determine is this—this is the substance of the whole thing: Is the fact newly affirmed, and first affirmed by this respondent, to wit, the fact that he had ceased to be Secretary of War when these articles were presented, a sufficient answer to the charge? You cannot escape that simple proposition. That is what you have got to try: Is the fact newly set up by the defendant, that he had ceased to be Secretary of War when these articles were presented, a sufficient answer to this charge? He sets that up and the House of Representatives say that is no sufficient answer: and that is a demurrer in substance and in fact; and on the question whether a fact so set up by my antagonist newly, for the first time in the case, is a sufficient answer to what I have said, I am always entitled to the opening and close.

Mr. MAXEY. Mr. President——

Mr. Manager HOAR. I desire the honorable Senator to remember that I have been quite led away from the previous request of the honorable Senator from New York.

Mr. MAXEY. I should be glad to call the manager's attention to one point. The plea in response to the articles of impeachment declares that before and at the time of the beginning of the proceedings for impeachment—that is in substance what it is—the respondent was not an officer of the United States. The managers in their reply to that, in their first replication, neither affirm nor deny that fact, but they go on to say that that plea is not good and sufficient in law, because they say that at the time of the commission of the offenses as set forth in the articles of impeachment he was such officer. That is the substance of that. Now it is claimed by the managers that that is in substance a general demurrer to the defendant's plea. Various other pleadings go on. The defendant then comes in and demurs to that first subdivision of the House's replication. To that demurrer of the defendant the managers or the House put in a *similiter*, join in demurrer. Now, I am like my friend from Illinois; I wish to understand if the effect of that in law would not be, by joining in the defendant's demurrer, to waive the House's demurrer? I should be glad to hear what they have to say on that point, if that is not the effect of the pleading, if joinder in the defendant's demurrer is not a waiving and abandonment of the first demurrer.

Mr. Manager HOAR. I should be constrained, I think, to answer by saying that I do not think that would be good practice, and a court of law would order those pleadings to be reformed and the matter to stop at the first demurrer and everything else to be stricken out. But at any rate——

Mr. MAXEY. I will state in addition, Mr. President, that so far as concerns the demurrer, which is joined, of the defendant, that demurrer does contain an offer to verify, which is unusual also in a demurrer, I think. Still having joined in that, I ask whether that joinder does not waive the demurrer of the managers?

Mr. Manager HOAR. I do not so understand.

Mr. SARGENT. I rise to a point of order.

The PRESIDENT *pro tempore*. The Senator will state his point of order.

Mr. SARGENT. Rule 18 provides:

If a Senator wishes a question to be put to a witness, or to offer a motion or order—except a motion to adjourn—it shall be reduced to writing and put by the presiding officer.

The PRESIDENT *pro tempore*. The Chair formerly ruled that debate was out of order; but he does not consider the manager a witness in the case. Senators asked unanimous consent to put questions to the manager to draw out information on the subject which he is discussing, and by unanimous consent the Chair allowed it.

Mr. SARGENT. I can see that if we indulge in questioning counsel on the respective sides at any length a great deal of time will be consumed, and perhaps the result will be much more unsatisfactory than even if we allowed general debate. I think I shall feel called upon hereafter to insist that it be not allowed.

The PRESIDENT *pro tempore*. If the Senator objects, the Chair will rule it out of order.

Mr. Manager HOAR. Mr. President and Senators, I have simply one thing to say in conclusion, and that merely a summing up of what has been already said. The substance of this whole matter, stripped of its form, is an affirmation by the party presenting articles of impeachment to the Senate that the Senate has the jurisdiction, and on that matter the House always has the affirmative and the right to reply. No plea was necessary of any kind to raise it. It is involved in the final determination of the issue.

In the next place, upon the pleadings as they stand the affirmative of the issue made up still rests upon the House of Representatives.

Mr. EDMUNDS. Mr. President, I sent a question in writing to the Chair which I ask that the Chair may have read to the managers.

The PRESIDENT *pro tempore*. The Senator from Vermont proposes a question which will be read.

The Chief Clerk read as follows:

Will the managers read the replication in Blount's case?

Mr. Manager HOAR. Will the honorable Senator allow me to ask the Secretary to read it?

Mr. EDMUNDS. Certainly.

The PRESIDENT *pro tempore*. The Secretary will read the replication called for.

The Chief Clerk read as follows:

The replication of the House of Representatives of the United States, in their own behalf and also in the name of the people of the United States, to the plea of William Blount to the jurisdiction of the Senate of the United States to try the articles of impeachment exhibited by them to the Senate against the said William Blount:

The House of Representatives of the United States, prosecuting, on behalf of themselves and the people of the United States, the articles of impeachment exhibited by them to the Senate of the United States against the said William Blount, reply to the plea of the said William Blount, and say that the matters alleged in the said plea are not sufficient to exempt the said William Blount from answering the said articles of impeachment, because they say that by the Constitution of the United States the House of Representatives had power to prefer the said articles of impeachment and that the Senate have full and the sole power to try the same. Wherefore they demand that the plea aforesaid of the said William Blount be not allowed, but that the said William Blount be compelled to answer the said articles of impeachment.

Mr. McDONALD. I would ask that the plea to the jurisdiction, to which the replication of the House was filed, be also read.

The Chief Clerk read as follows:

UNITED STATES vs. WILLIAM BLOUNT. } Upon impeachment of the House of Representatives of the United States, of high crimes and misdemeanors.

IN SENATE OF THE UNITED STATES,
December 24, 1798.

The aforesaid William Blount, saving and reserving to himself all exceptions to the imperfections and uncertainty of the articles of impeachment, by Jared Ingersoll and A. J. Dallas, his attorneys, comes and defends the force and injury, and says that he, to the said articles of impeachment preferred against him by the House of Representatives of the United States, ought not to be compelled to answer, because he says that the eighth article of certain amendments of the Constitution of the United States, having been ratified by nine States, after the same was, in a constitutional manner, proposed to the consideration of the several States in the Union, is of equal obligation with the original Constitution and now forms a part thereof, and that by the same article it is declared and provided that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

That proceedings by impeachment are provided and permitted by the Constitution of the United States only on charges of bribery, treason, and other high crimes and misdemeanors alleged to have been committed by the President, Vice-President, and other civil officers of the United States, in the execution of their offices held under the United States, as appears by the fourth section of the second article and by the seventh clause of the third section of the first article and other articles and clauses contained in the Constitution of the United States.

That, although true it is that he, the said William Blount, was a Senator of the United States from the State of Tennessee at the several periods in the said articles of impeachment referred to, yet that he, the said William, is not *now a Senator*, and is not nor was at the several periods so as aforesaid referred to an officer of the United States; nor is he, the said William, in and by the said articles charged with having committed any crime or misdemeanor in the execution of any civil office held under the United States, or with any malconduct in civil office or abuse of any public trust in the execution thereof.

That the courts of common law of a criminal jurisdiction of the States wherein the offenses in the said articles recited are said to have been committed, as well as those of the United States, are competent to the cognizance, prosecution, and punishment of the said crimes and misdemeanors, if the same have been perpetrated, as is suggested and charged by the said articles, which, however, he utterly denies. All which the said William is ready to verify and prays judgment whether this high court will have further cognizance of this suit and of the said impeachment, and whether he, the said William, to the said articles of impeachment, so as aforesaid preferred by the House of Representatives of the United States, ought to be compelled to answer.

JARED INGERSOLL.
A. J. DALLAS.

Mr. Manager HOAR. I now ask the Secretary to read, as was requested by the Senator from New York, the first plea in the present case.

Mr. CHRISTIANCY. I wish to submit a question in writing.

The PRESIDENT *pro tempore*. The manager has desired to have a plea read before any other business is transacted. It will be first read.

The Chief Clerk read as follows:

In the Senate of the United States sitting as a court of impeachment.

THE UNITED STATES OF AMERICA vs. WILLIAM W. BELKNAP. }

The replication of the House of Representatives of the United States, in their own behalf and also in the name of the people of the United States, to the plea of William W. Belknap to the articles of impeachment exhibited by them to the Senate against the said William W. Belknap.

The House of Representatives of the United States, prosecuting, on behalf of themselves and the people of the United States, the articles of impeachment exhibited by them to the Senate of the United States against said William W. Belknap, reply to the plea of said William W. Belknap, and say that the matters alleged in the said plea are not sufficient to exempt the said William W. Belknap from answering the said articles of impeachment, because they say that at the time all the acts charged in said articles of impeachment were done and committed, and thence continuously done to the 2d day of March, A. D. 1876, the said William W. Belknap was Secretary of War of the United States, as in said articles of impeachment averred, and therefore that, by the Constitution of the United States, the House of Representatives had power to prefer the articles of impeachment and the Senate have full and the sole power to try the same. Wherefore they demand that the plea aforesaid of the said William W. Belknap be not allowed, but that the said William W. Belknap be required to answer the said articles of impeachment.

Mr. Manager HOAR. It will be seen that the only allegation of fact there is a statement that the fact is as the original articles averred.

Mr. CHRISTIANCY. I now ask that my question be read.

The PRESIDENT *pro tempore*. The Senator from Michigan proposes a question which will be read.

The Chief Clerk read as follows:

1. If, as the managers contend, the first reply to the plea is a re-assignment of matters of fact, can it be at the same time a demurrer?
2. Is it claimed that the second replication is also a demurrer?
3. Are not the commencement and conclusion or prayer of the second replication the same as in the first?

Mr. Manager HOAR. I do not understand, Mr. President and Senators, that the second replication is also a demurrer. I do understand that where a plea is ambiguous and the reply contains a re-assignment of a matter of fact affirmed in the original charge it can be at the same time a demurrer. I answer, therefore, the first proposition of the honorable Senator very confidently in the affirmative.

In regard to the commencement and conclusion or prayer of the second replication being or not the same as the first, I cannot, without a little examination, answer. The honorable Senator can answer it for himself; but I do not understand that this is a question of prayer, or of conclusion, or of labels, or of formalities. It is a question of what is the substance of the issue, no matter what is put on the back of the paper or foot of a paper which makes up the issue. The substance of this issue is that the House of Representatives now have upon them the burden of satisfying the Senate that it has jurisdiction over this offense and that the matters of fact alleged by the defendant in opposition to that jurisdiction are immaterial. That is the substance of a demurrer, and entitles us, as matter of substance, to the reply.

Mr. CARPENTER. Mr. President——

Mr. EDMUNDS. Before the counsel proceeds I ask leave to submit one other question to the manager.

The PRESIDENT *pro tempore*. The inquiry of the Senator from Vermont will be read.

The Chief Clerk read as follows:

Is there any allegation in the articles that Mr. Belknap was Secretary of War down to the 2d day of March, 1876?

Mr. Manager HOAR. That would require a discussion of the question whether the meaning of the phrase "down to a day" and the meaning of the phrase "until a day" is the same. The honorable Senator from Vermont can answer as well as I can. The third article alleges that the "said William W. Belknap continued in office as such Secretary of War until the 2d day of March, 1876," and the fifth article alleges that "from the 10th day of October, in the year 1870, * * * continuously to the 2d day of March, 1876," he held the office.

Mr. DAVIS. Mr. President, I shall have to ask the manager to speak a little louder. We cannot hear him on this side.

Mr. Manager HOAR. The honorable Senator from Vermont inquired whether there was any allegation in the original articles that the defendant held the office of Secretary of War down to the 2d day of March, 1876, which is the allegation of the replication set forth in the articles, to which I reply that one article alleges that he held the office until the day, and another that he held it from a certain date continuously to that day; and unless there be some distinction, which I cannot understand, between those expressions and the word "until" they do so allege.

Mr. SHERMAN. Mr. President, I desire to submit to the managers and also to the counsel of the defendant an inquiry in regard to another branch of the subject.

The PRESIDENT *pro tempore*. The Secretary will read the inquiry of the Senator from Ohio.

The Chief Clerk read as follows:

Will it meet the convenience of the managers and the counsel for the defendant to be allowed on each side a limited number of hours for the argument on the question made as to the jurisdiction of the Senate, such time to be apportioned among the counsel as each side may desire? If so, what number of hours do they desire as the limit?

The PRESIDENT *pro tempore*. Have the counsel anything to say?

Mr. BLAIR. I will state for the counsel for the defendant that we could not answer that question without consultation with our absent colleague, [Mr. Black.]

Mr. Manager LORD. We are in the same condition, Mr. President, in that regard. We shall have to confer with the other counsel before we can answer the question.

The PRESIDENT *pro tempore*. Do the gentlemen counsel desire to be heard upon the motion?

Mr. CARPENTER. Mr. President, before proceeding to speak on this question, I wish to know whether I correctly understood the honorable manager who last addressed the Senate to say, that the presumption that the defendant is innocent, which is recognized in every criminal court of the land, is not to be applied in this case?

Several SENATORS. O, no!

Mr. Manager HOAR. Mr. President, I am very unfortunate in the choice of language to make my meaning clear to the learned counsel on the other side, as I have experienced once or twice before.

Mr. CARPENTER. If the manager will pardon me, it is not his misfortune in using language but our misfortune that we were too far away to hear what he said.

Mr. Manager HOAR. I thought I had said very distinctly that in my judgment everything of substance which secured a full and fair trial would be given to the defendant here, was his due according to the practice of the courts of impeachment, and that this included the operation of the presumption of innocence which ever attends him as a matter of common justice and common right.

Mr. CARPENTER. I desire, Mr. President, to return my thanks to the honorable manager and through him to the House of Representatives for that concession. My colleague and myself, unable to hear the honorable manager, understood him to say exactly the reverse. We thought it could not be possible, but to be certain about it I put the question to him.

Mr. President, so far as regards the argument of the question of jurisdiction in this case, it is entirely indifferent to me which side shall be permitted to open and close the argument. In summing up complicated questions of fact before a jury, this might be an important privilege; but, in arguing questions of law before this court, I do not regard it as of the slightest consequence.

But we all know how precedents imperceptibly become law. A course pursued on this trial without objection, may be cited in the next impeachment trial as settling a question which may be very important then, although wholly immaterial now. So that lawyers who appear here in the defense of particular cases owe not only a duty to their clients, but also a solemn duty to justice whose ministers they are, and to the forty millions of people now sought to be subjected to the criminal jurisdiction of this tribunal.

In Blount's trial the House of Representatives had interposed the first demurrer, and therefore the managers were entitled to open and close the argument. In the report of that case, 2 Annals of Congress, page 2248, it is said:

Mr. Bayard, the chairman, having communicated with Mr. Ingersoll, the leading counsel for the defendant, it was agreed between them that the managers should proceed in the argument first on the part of the prosecution, and that the right to reply should belong to the managers.

That is, the managers and the counsel for the defendant, being good lawyers, were agreed that the managers were entitled to open and close the argument upon the demurrer interposed by them. Such is the rule in all courts of justice. And yet the honorable manager [Mr. HOAR] refers to this understanding between counsel as to the rights of the managers, in that case, to show that the managers, in all cases, are entitled to open and close the argument upon a demurrer interposed by the defendant; which would be exactly the *reverse* of the rule in courts of law.

Indeed, the broad proposition is maintained by the honorable manager, that in the argument of every question to arise in this case, upon every motion made by either side, and upon every demurrer, no matter by which side interposed, the managers are entitled to the opening and close. And I understood him to contend at your last sitting that this was conceded by the eminent counsel who defended the impeachment against President Johnson, when the question was first raised by Mr. Manager Bingham; and that the court, and counsel on both sides, thereafter proceeded on that hypothesis.

But an examination of the report of that trial shows that the honorable manager was under a total misapprehension. I read from page 77 of the first volume of the congressional edition of that trial:

Mr. HOWARD and Mr. Manager BINGHAM rose at the same time.

The CHIEF JUSTICE. The Senator from Michigan.

Mr. Manager BINGHAM. On the part of the managers I beg to respond to what has just been said.

Mr. HOWARD. I beg to call the attention of the President to the rules that govern the body.

Mr. Manager BINGHAM. I will only say that we have used but thirty-five of the minutes of the time allowed us under the rule.

The CHIEF JUSTICE. The Chair announced at the last sitting that he would not undertake to restrict counsel as to number—

They had been restricted as to time—

without the further order of the Senate, the rule not being very intelligible to him. He will state further that when counsel make a motion to the court, the counsel who makes the motion has invariably the right to close the argument upon it.

Several SENATORS. Certainly.

Mr. Bingham, however, wished to be heard, and by unanimous consent was heard, just as this body, unquestionably by unanimous consent would hear any manager on this honorable board, who might ask such indulgence. So Mr. Bingham was heard. It is true that in his remarks he set up this unwarrantable claim, which has been repeated by his successor, that the House of Representatives had the right to close every argument whether they had the affirmative of the particular issue or not; but the silence with which the Senate listened leads me to infer that they were perfectly satisfied with the ruling of the Chief Justice, made before Mr. Bingham took the floor, and never recalled, and which was supported by "several Senators" answering from their places "certainly." No vote was taken on the question. It was an interlocutory question. I believe, a motion by the defendant for additional time to answer.

The Chief Justice ruled emphatically, that whichever party made a motion, the counsel who made it had *invariably* the right to close the argument upon it, and several Senators responded "certainly." And nothing occurred to show that the remarks of Mr. Bingham affected the opinion of the Chief Justice or of the Senators who responded in approval. Certainly the ruling was not changed.

It is certain that neither of the cases relied upon by the honorable

manager give the slightest countenance to his proposition; and it is difficult to see upon what reasoning it can rest.

The manager concedes that the general principles of law and maxims of justice are to be respected in this trial; and that charity—the crowning excellence of our holy religion—charity that thinketh no evil, and is embodied in the law in the maxim that every one is presumed to be innocent until proved to be guilty, is to rule in the conduct of this trial.

There is no question as to what is the rule in the courts of law. There it is well settled that the party demurring has the right to open and close the argument. The rules of pleading and proceeding in the ordinary courts of justice, no less than the great canons of the common law, have resulted from centuries of practical experience in the administration of justice, and have been approved by the sages of the law as the best methods to elicit truth and administer justice. If these rules are wisely devised to insure these ends, why should they be departed from in this trial? Is there other motive here than to ascertain the truth and do justice? One of two things is clear; those rules should be observed here, or abolished there. It is impossible to maintain that one system of procedure will secure justice in one tribunal and produce injustice in another. And the question is whether the methods which have been established, and from time to time improved, in the courts of law, which are in almost continuous session and dealing with endless variety of causes, are less reliable than rules which might be adopted in a court like this which sits only occasionally after long intervals, and where the *personnel* of the court is likely to be wholly changed between one trial and another.

But I understand the honorable manager to rest his claim upon the prerogative of the House of Representatives. In his conception this is not the trial of a cause, but a great political and legislative proceeding, in which the House and the Senate are on terms of perfect equality; the managers representing the majesty of the House, with as much right to declare what shall be the ruling of this court, as this court itself. Prerogative has been the watchword of tyranny for centuries. Whenever the Tudors or the Stuarts determined to take any illegal or arbitrary proceeding, it was always justified as part of the prerogatives of the Crown.

I understand that, in every debate between a man and woman, the woman is entitled to the last word. But I was not prepared to hear the honorable managers claim a privilege which gallantry only concedes to the weaker sex.

This is a trial upon accusation of crime; a trial secured by the Constitution. What is a trial? It is a proceeding before a competent forum, where two opposing parties contend for judgment; two parties standing as to rights and privileges upon a footing of absolute equality. Here the House of Representatives is the prosecutor. It has chosen several lawyers to manage its side of the case; and the respondent has chosen three to manage his defense. And it is essential to the right conduct of any trial that the court should look impartially upon the respective parties and their counsel. What preference is to be accorded to the managers over the counsel for the defense? Is an argument coming from them to have greater weight than an argument of equal strength presented by the defense? It is true that at each opening of this court the managers come heralded by proclamation, and are conducted to their seats by the Sergeant-at-Arms. This is not necessary in our case, for we can easily remember from day to day where our seats are. But after the managers have reached their seats in safety, their derivative majesty vanishes, and they are then mere lawyers.

To show that this is the real character of this trial, let me read from Cushing's Law and Practice of Legislative Assemblies. Section 2535 says:

> It has already been stated, that Parliament exercises a judicial power, for the trial and punishment of offenders, in certain cases, by means of bills of attainder and of pains and penalties. In proceedings of this description each house participates as a legislative body, and the concurrence of both is necessary. The person, against whom the bill is directed, is tried, so far as any trial takes place, first by the one house and then by the other, and if the bill passes is found guilty by both. There is also another form of proceeding, in which one house, the Commons, appears solely in the character of complainants or accusers, and the other, the Lords, performs the functions of a judicial tribunal. A prosecution of this character is known by the name of impeachment. * * *
>
> 2548. The House of Commons prosecutes an impeachment by the agency of managers previously appointed for the purpose from among their own members. The managers exercise the ordinary functions of counsel, and open the case, and examine witnesses to sustain the charges in the same manner as on the trial of an indictment.
>
> When the case has been concluded on the part of the prosecution, the managers for the Commons are answered by the counsel for the accused, who also call and examine witnesses for the defense, if they think proper, according to the usual course of criminal proceedings. When the case for the defense is closed, the managers have the right to reply. The House of Commons proceeds to the place of trial, and there attends, in a body, each day, during the trial, as a committee of the whole, and returns to its house in the same manner. In the performance of their several duties, both the managers for the Commons and the counsel for the accused are subject to the direction and supervision of the court and are bound to conform to the rules of proceeding which are observed in other judicial tribunals. The managers for the Commons are bound to confine themselves to the charges contained in the articles of impeachment.

Reference is here made, in a note, to the trial of Warren Hastings. Burke, in one of his philippics, uttered language importing charges of crime not mentioned in the articles of impeachment. Hastings, by petition, informed the Commons, and inquired whether they intended making such accusation against him. The Commons made the matter a special order for a subsequent day, when it was fully considered. They summoned the stenographer to bring his notes of Mr. Burke's speech, that they might know precisely what he had said. The offensive words were placed upon the journal, and a resolution was adopted, declaring that Burke had no authority from the Commons to utter such language against Warren Hastings. A resolution was then offered, thanking Burke and his associate managers for the zeal and ability with which, in general, they had prosecuted the impeachment. This was rejected; showing that the Commons regarded it as a grave offense on the part of Mr. Burke to go outside of the articles to accuse the defendant. (44 Commons Journal, page 320.)

This illustrates how carefully the rights of Englishmen are protected in all judicial proceedings.

Now let me briefly state the condition of the pleadings in this case.

To the articles of impeachment the respondent interposed a plea to the jurisdiction, averring that, when the House ordered the impeachment, and when the articles were exhibited, he was not an officer of the United States, but was a private citizen, &c.

It is contended by some that a citizen holding one office may be removed by impeachment for prior misdemeanors in another office. If this be sound, then the plea to the jurisdiction set up new matter, that is, that he was not in *any* office. Some of the articles of impeachment did not show that he was out of office as Secretary of War, and none of them averred that he was a private citizen. To this plea the House of Representatives replied double; first, that he was Secretary of War, when the acts complained of were done, and continued in such office "down to the 2d day of March, 1876;" second, that he was in such office "until and *including* the 2d day of March, 1876," and until the House, by its committee, had completed an investigation, &c.

Mr. CONKLING. This is a replication.

Mr. CARPENTER. Certainly, and so they call it.

To the first replication the respondent interposed a demurrer; found on page 8 of printed proceedings. And the managers filed a joinder in demurrer; found on page 9.

The honorable manager [Mr. HOAR] now claims that the first replication was a demurrer. An inspection will show that it was not. It does not object to the plea as insufficient in matter of law, but because of certain facts therein set forth. We demurred to this replication, and they joined in demurrer.

If all the pleadings subsequent to the articles of impeachment are regarded as immaterial, then the substance of the matter is, we have demurred to the articles. And a demurrer to the articles is an affirmative assertion that, conceding the truth of the matters therein contained, they are insufficient in law; and upon this proposition we hold the affirmative.

Senators, I have not detained you thus long because the particular question, who shall open and close the argument upon the matter of jurisdiction, is of any importance to the respondent in this case. It is important, however, that every step in this proceeding should be taken with anxious circumspection. What you do here will be followed in other cases. And if you shall finally decide that impeachment lies against others than officers of the United States; decide that, when a citizen has once held a Federal office, he remains subject to impeachment by an opposite administration, for conduct not previously defined as crime; without limitation as to time, assert a jurisdiction from which the grave alone can give immunity; and hold that, when brought here for trial, the law fixing his offense is to be declared for the first time, by the judges before whom he is on final trial; and add to this the further doctrine, now contended for, that the trial is to be conducted without regard to forms and usages familiar to the people; we, as counsel for this respondent, wish to have it appear of record that principles so dangerous to liberty were not established with our silent acquiescence, but against our solemn protest.

Mr. MERRIMON. I desire to propound a question to the managers which I send to the Chair.

The PRESIDENT *pro tempore*. It will be read.

The Secretary read as follows:

Do the managers claim to reply in the discussion of all questions, as a matter of right, or only on the ground of practice, which the court may in its sound discretion rightfully change?

Mr. Manager HOAR. I respectfully reply to that question that we do not concede that whatever be the constitutional and lawful prerogatives of the House of Representatives in this regard can be rightfully changed without the assent of the House itself.

Mr. EDMUNDS. I move that the Senate withdraw.

The PRESIDENT *pro tempore*. The Senator from Vermont moves that the Senate retire for consultation.

Mr. CONKLING. I ask for the yeas and nays on that question.

The yeas and nays were ordered; and being taken, resulted—yeas 40, nays 18; as follows:

YEAS—Messrs. Allison, Anthony, Bayard, Booth, Boutwell, Burnside, Cameron of Wisconsin, Caperton, Christiancy, Cooper, Davis, Dennis, Eaton, Edmunds Ferry, Frelinghuysen, Goldthwaite, Gordon, Howe, Kelly, Kernan, Key, McCreery McDonald, McMillan, Merrimon, Morrill of Maine, Morrill of Vermont, Norwood, Oglesby, Patterson, Randolph, Robertson, Saulsbury, Sherman, Stevenson, Thurman, Wadleigh, Whyte, and Wright—40.

NAYS—Messrs. Cameron of Pennsylvania, Conkling, Conover, Dawes, Hamilton, Hamlin, Harvey, Ingalls, Jones of Florida, Logan, Maxey, Mitchell, Paddock, Sargent, Spencer, West, Windom, and Withers—18.

NOT VOTING—Messrs. Bogy, Bruce, Clayton, Cockrell, Cragin, Dorsey, English, Hitchcock, Jones of Nevada, Morton, Ransom, Sharon, and Wallace—13

So the motion was agreed to; and the Senate (at two o'clock and twenty-one minutes p. m.) retired to the conference chamber.

On the question to agree to the motion of Mr. McDONALD,

After debate,

The question being taken by yeas and nays, resulted—yeas 20, nays 34; as follows:

YEAS—Messrs. Bayard, Caperton, Cockrell, Cooper, Davis, Dawes, Goldthwaite, Gordon, Jones of Florida, Kelly, Key, McCreery, McDonald, Norwood, Ransom, Saulsbury, Stevenson, Thurman, Wallace, and Withers—20.

NAYS—Messrs. Allison, Anthony, Boutwell, Burnside, Christiancy, Conkling, Dennis, Edmunds, Ferry, Frelinghuysen, Hamilton, Hamlin, Harvey, Hitchcock, Howe, Ingalls, Logan, McMillan, Maxey, Merrimon, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Oglesby, Paddock, Patterson, Robertson, Sargent, Spencer, Wadleigh, Whyte, Windom, and Wright—34.

NOT VOTING—Messrs. Bogy, Booth, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Clayton, Conover, Cragin, Dorsey, Eaton, English, Jones of Nevada, Kernan, Randolph, Sharon, Sherman, and West—17.

So the motion was not agreed to.

On motion of Mr. BOUTWELL, it was

Ordered, That four managers on the part of the House of Representatives may be allowed to submit arguments upon the question whether the respondent is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office, and whether the issues of the fact presented in the pleadings are material, and also whether the matters in support of the jurisdiction alleged by the House of Representatives in the pleadings subsequent to the articles of impeachment can be thus alleged if the same are not averred in said articles.

On motion of Mr. CONKLING, the Senate returned to its Chamber.

At two o'clock and fifty-three minutes p. m. the Senate returned to the Senate Chamber and the President *pro tempore* took the chair.

The PRESIDENT *pro tempore*. The presiding officer is directed to state that the motion to reconsider the vote by which the order of argument was made is overruled, and also to state that an order is made granting the request of the managers on the part of the House that four of the managers be permitted to argue the case.

Mr. THURMAN. I move that the Senate sitting for the trial of the articles of impeachment adjourn until Thursday next at half past twelve o'clock.

The motion was agreed to; and the Senate sitting for the trial of the impeachment of W. W. Belknap adjourned until Thursday next at twelve o'clock and thirty minutes p. m.

THURSDAY, *May* 4, 1876.

The PRESIDENT *pro tempore* having announced the arrival of the time to which the Senate sitting for the trial of the impeachment had adjourned,

The usual proclamation was made by the Sergeant-at-Arms.

The respondent appeared with his counsel, Mr. Blair, Mr. Black, and Mr. Carpenter.

The managers of the impeachment on the part of the House of Representatives appeared in the seats provided for them.

The PRESIDENT *pro tempore*. The Chair understands that there is a Senator present who has not been sworn. The Secretary will call the names of absentees who have not been sworn.

The Chief Clerk called the names of the Senators who had not been heretofore sworn; and the President *pro tempore* administered the oath to Senator JOHNSTON.

The PRESIDENT *pro tempore*. The Secretary will give the usual notice to the House of Representatives. The minutes of the trial-day of Monday last will now be read.

The Secretary read the journal of the proceedings of the Senate sitting for the trial of the impeachment of W. W. Belknap of Monday, May 1, 1876.

The PRESIDENT *pro tempore*. The Senate is now ready to proceed with the trial. The Secretary will report the two orders made by the Senate.

The Secretary read as follows:

Ordered, That the Senate proceed first to hear and determine the question whether W. W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office; and that the managers and counsel in such argument discuss the question whether the issues of fact are material and whether the matters in support of the jurisdiction alleged by the House of Representatives in the pleadings subsequent to the articles of impeachment can be thus alleged if the same are not averred in said articles.

Ordered, That the hearing proceed on the 4th of May, 1876, at twelve o'clock and thirty minutes p. m.; that the opening and close of the argument be given to the respondent; that three counsel and four managers may be heard in such order as may be agreed on between themselves; and that such time be allowed for argument as the managers and counsel may desire.

The PRESIDENT *pro tempore*. Gentlemen of counsel will now proceed with the opening of the argument.

Mr. CARPENTER. Mr. President, in the present attitude of affairs, I wish to suggest to the court, (and I believe I shall not be opposed in the request by the managers,) that if an adjournment of the Senate is to take place for a week, which adjournment will certainly come in the middle of the argument—for it is impossible to conclude it in the remainder of this week and nobody expects that that can be done—I presume it will be more convenient for the counsel on both sides, and I should suppose for the court also, to let the argument come after that adjournment. That would give us a little additional time for preparation which on the part of the defendant we really need. We had all been so much occupied with other engagements that until Monday I believe none of us had sat down to a preparation for the argument of this question. Its importance both to this case and to the public, if it is to stand as a ruling upon a great constitutional question, certainly demands that we should give it a more thorough preparation than we have been able to do in two or three days. Now, as there seems to be a probability at least that the Senate will adjourn, I submit to the court the propriety of our commencing the argument after the Senate resumes its session.

Mr. Manager LORD. Mr. President and Senators, we prefer of course to go on with this argument if we can have a consecutive hearing from day to day; but the case is somewhat different if the argument is to be broken into by the adjournment of the Senate—and I confess it looks very much as though it would—because from my experience here on Saturdays and Mondays I do not think very much would be done on those days in the presence of the great celebration to which reference has been made. And therefore, on behalf of the managers, I say that unless it is certain that this court can sit from day to day until the arguments are all in, the managers prefer that there should be an adjournment.

Mr. CARPENTER. I ask for an order, Mr. President, to that effect that the further trial of the case be postponed to——

The PRESIDENT *pro tempore*. Will the counsel reduce his motion to writing?

The motion was reduced to writing, and read by the Secretary, as follows:

Ordered, That the further trial of this cause be postponed until Monday, the 15th of May.

Mr. SHERMAN. Mr. President, I submit an order.

The PRESIDENT *pro tempore*. The order submitted by the Senator from Ohio will be read.

The Secretary read as follows:

Ordered, That this court adjourn until Monday, May 15, at twelve o'clock and thirty minutes p. m., and that the argument of the question of jurisdiction be confined to eight hours on each side.

The PRESIDENT *pro tempore*. The question is on the motion proposed by the Senator from Ohio.

Mr. SARGENT. Is an amendment in order?

The PRESIDENT *pro tempore*. It is.

Mr. SARGENT. I move to strike out the words of limitation.

The PRESIDENT *pro tempore*. The Senator from California will reduce his amendment to writing.

The amendment was reduced to writing and read, as follows:

Strike out these words: "and that the argument of the question of jurisdiction be confined to eight hours on each side."

The PRESIDENT *pro tempore*. The first question will be on this amendment to the order proposed by the Senator from Ohio.

The amendment was agreed to.

The PRESIDENT *pro tempore*. The question recurs on the order of the Senator from Ohio as amended.

Mr. HOWE. I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDENT *pro tempore*. The Secretary will report the order as amended.

The Secretary read as follows:

Ordered, That this court adjourn until Monday, May 15, at twelve o'clock and thirty minutes p. m.

The yeas and nays being taken, resulted—yeas 21, nays 40; as follows:

YEAS—Messrs. Anthony, Bogy, Burnside, Caperton, Clayton, Conover, Cooper, Davis, Dennis, Ferry, Goldthwaite, Hamlin, Howe, Johnston, Kelly, Mitchell, Morrill of Maine, Patterson, Randolph, Sargent, and Windom—21.

NAYS—Messrs. Allison, Booth, Boutwell, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Cockrell, Conkling, Dawes, Dorsey, Eaton, Edmunds, Frelinghuysen, Hamilton, Hitchcock, Ingalls, Jones of Florida, Kernan, Key, Logan, McCreery, McDonald, McMillan, Maxey, Merrimon, Morrill of Vermont, Norwood, Oglesby, Paddock, Ransom, Robertson, Saulsbury, Sherman, Thurman, Wadleigh, Wallace, Whyte, Withers, and Wright—40.

NOT VOTING—Messrs. Bayard, Cragin, English, Gordon, Harvey, Jones of Nevada, Morton, Sharon, Spencer, Stevenson, and West—11.

The PRESIDENT *pro tempore*. The Senate declines to make the proposed order. Senators, the counsel on the part of the respondent submit for your decision a motion which will be read.

The Secretary read as follows:

Ordered, That the further trial of this cause be postponed until Monday, the 15th of May.

Mr. THURMAN. After the amendments made to the former order that was offered, it was left precisely what this is. It is precisely the same proposition.

The PRESIDENT *pro tempore*. It is not in the same language.

Mr. THURMAN. It is the same in substance.

The PRESIDENT *pro tempore*. One adjourns the trial and the other postpones the trial.

Mr. BLACK. Mr. President and Senators, I am requested by the counsel on both sides, by the managers and the counsel for the accused, to say that if this continuance be granted we will accept the

limitation all around, and I think that will bring the argument to a conclusion about as soon as it would come if a part of it were commenced now.

Mr. SHERMAN. Mr. President, I will then renew the motion as I originally submitted it.

Mr. EDMUNDS. That is not in order.

The PRESIDENT *pro tempore*. It is not in order, the Senate having declined to so order.

Mr. SHERMAN. I can change it by a word.

The PRESIDENT *pro tempore*. The Chair will entertain any motion that is in order.

Mr. SHERMAN. I will make the time nine hours.

The PRESIDENT *pro tempore*. The Secretary will report the order as now proposed.

The Secretary read as follows:

Ordered, That this court adjourn until Monday, May 15, at twelve o'clock and thirty minutes p. m.; and that the argument of the question of jurisdiction be confined to nine hours on each side, to be divided between them as the managers and counsel may agree.

Mr. Manager LORD. Mr. President, I should like to say to the Senate, as I find that I was not entirely understood by all the managers, that if we could be certain of a consecutive hearing at this time the managers would prefer it; but, not being certain of that, we authorized, in part at least, Mr. Black to make the suggestion he has made.

The PRESIDENT *pro tempore*. The question is on the motion proposed by the Senator from Ohio as just read.

Mr. SHERMAN. I call for the yeas and nays.

The yeas and nays were ordered; and being taken, resulted—yeas 22, nays 38; as follows:

YEAS—Messrs. Bogy, Caperton, Clayton, Conover, Cooper, Davis, Dennis, Goldthwaite, Hamlin, Howe, Kelly, Mitchell, Morrill of Maine, Patterson, Randolph, Ransom, Sargent, Saulsbury, Sherman, Thurman, Whyte, and Windom—22.

NAYS—Messrs. Allison, Booth, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Cockrell, Conkling, Dawes, Eaton, Edmunds, Ferry, Frelinghuysen, Gordon, Hamilton, Hitchcock, Ingalls, Johnston, Jones of Florida, Kernan, Key, Logan, McCreery, McDonald, McMillan, Maxey, Merrimon, Morrill of Vermont, Norwood, Oglesby, Paddock, Robertson, Wadleigh, Wallace, Withers, and Wright—38.

NOT VOTING—Messrs. Anthony, Bayard, Cragin, Dorsey, English, Harvey, Jones of Nevada, Morton, Sharon, Spencer, Stevenson, and West—12.

Mr. BLAIR. Mr. President——

The PRESIDENT *pro tempore*. The Senate will please give attention.

Mr. BLAIR. Mr. President and Senators, the first question before the court is whether a private citizen is subject to impeachment, either without regard to the time or manner of his leaving office or when he may have resigned to avoid impeachment upon an assurance from the chairman of the prosecuting committee that he was in such case not to be prosecuted. The second question is whether all the allegations of fact which are necessary to maintain jurisdiction must be alleged in the articles, or whether they may be supplied in subsequent pleadings.

These are the two questions which I understand are now to be discussed.

Upon the first question I do not know how the managers are to maintain the jurisdiction of this court upon any other principle than that which was asserted in the Blount case, which was that "all persons are liable to impeachment" (Annals of Congress of 1797, volume 2, page 2251,) because, as was alleged there, all persons are liable in England, the country from which we borrow the proceeding, and to whose laws and usages we must therefore look for the extent of its application. But as the court on that occasion overruled this doctrine, and the decision has been acquiesced in for seventy-eight years, the managers ought not now to expect this court to overrule it. In that case it was pleaded "that although the defendant was a Senator at the several periods in said articles of impeachment referred to, yet he is not now a Senator or officer of the United States." And the court held this plea to be sufficient upon demurrer. This decision is as conclusive against the proposition maintained by the managers in this case as it was against that of the managers in Blount's case. The fact that the defense rested in that case chiefly upon the ground that the defendant was not a Senator at the date of the several acts charged, a civil officer, does not make it less conclusive upon the point that impeachments lie only against civil officers, because the effect of the decision is to declare that the fourth section of the second article defines the persons against whom it may be brought, and that section limits it to officers.

The question thus adjudicated is not an open question, it having been decided that any person may not be impeached whether in or out of office, and hence we must look to the words of the Constitution to ascertain who may be impeached. It is only those persons who are specially described in the Constitution are subject to be impeached.

And if the court will consider the reasons upon which it acted in that instance it will be found that they are fully as applicable here. The proposition now maintained by the managers is repugnant to the policy of the English government; it is against the fundamental doctrines upon which our own Government was founded, and it is against the letter of the Constitution. All the best writers and the accepted authorities who speak of this proceeding in England say that its appropriate sphere is against great offenders, possessing the power of the government, whom it is necessary to bring to bay by the organized power of the people in their House of Commons.

Impeachment as a mode of enforcing penal law stands on a different footing than the trial by jury, which is dear to the hearts of the English-speaking race, while the history of impeachment associates it with the terrors of bills of attainder, a kindred proceeding. It is an invasion upon Magna Charta, which provides that no man shall be condemned save by the lawful judgment of his peers or according to the law of the land, and it was introduced into English practice long subsequent to the adoption of Magna Charta and is said to have been the growth of necessity to bring to justice great offenders who had the power of the government in their hands. Blackstone, in the fourth volume of his Commentaries, (by Chitty,) page 260, says:

The high court of Parliament; which is the supreme court in the kingdom, not only for the making, but also for the execution of laws; by the trial of great and enormous offenders, whether lords or commoners, in the method of parliamentary impeachment. As for acts of Parliament to attaint particular persons of treason or felony, or to inflict pains and penalties, beyond or contrary to the common law, to serve a special purpose, I speak not of them; being to all intents and purposes new laws, made *pro re nata*, and by no means an execution of such as are already in being. But an impeachment before the Lords by the Commons of Great Britain, in Parliament, is a prosecution of the already known and established law and has been frequently put in practice; being a presentment to the most high and supreme court of criminal jurisdiction by the most solemn grand inquest of the whole kingdom. A commoner cannot, however, be impeached before the Lords for any capital offense, but only for high misdemeanors; a peer may be impeached for any crime. And they usually (in case of an impeachment of a peer for treason) address the Crown to appoint a lord high steward for the greater dignity and regularity of their proceedings; which high steward was formerly elected by the peers themselves, though he was generally commissioned by the king; but it hath of late years been strenuously maintained, that the appointment of an high steward in such cases is not indispensably necessary, but that the house may proceed without one. The articles of impeachment are a kind of bills of indictment, found by the House of Commons and afterward tried by the Lords; who are in cases of misdemeanors considered not only as their own peers, but as the peers of the whole nation. This is a custom derived to us from the constitution of the ancient Germans, who in their great councils sometimes tried capital accusations relating to the public: "*licet apud consilium accusare quoque et discrimen capitis intendere.*" And it has a peculiar propriety in the English constitution; which has much improved upon the ancient model imported hither from the continent.

Now mark:

For, though in general the union of the legislative and judicial powers ought to be more carefully avoided, yet it may happen *that a subject, instructed with the administration of public affairs, may infringe* the rights of the people, and be guilty of such crimes as the *ordinary magistrate* either *dares not or cannot punish.*

To the same effect the court will find the doctrine laid down by Wooddeson in his lecture upon parliamentary impeachment. In the edition in my hand, the law library edition, the marginal page is 335:

It is certain—

Says Wooddeson—

that magistrates and officers intrusted with the administration of public affairs may abuse their delegated powers to the injury or ruin of the community, and at the same time in offenses not properly cognizable before the ordinary tribunals. *The influence of such delinquents*, and the nature of such offenses, may not unsuitably engage the authority of the highest court, and the wisdom of the sagest assembly. The Commons, therefore, as the grand inquest of the nation, become suitors for penal justice; and they cannot, consistently either with their own dignity or with safety to the accused, sue to any other court but that of those who share with them in the legislature.

The author, after having explained thus the origin and nature and proper subjects of impeachment, goes on in the most pregnant language to show how the proceeding has been abused to the oppression of persons who had not the *power* which alone made it proper to have them arraigned in such a tribunal, and how it has been abused to the oppression of private and innocent persons, to the ruin of their private fortune. In a note to this edition he says at marginal pages 369–370:

It deserves consideration, whether the expenses of defendants in impeachments should not be the subject of legislative provision; otherwise, it is in the power of the prevailing party to crush any obnoxious individual by a mere accusation. For the last century and a half private persons impeached by the Commons have either sunk under the unequal struggle with the guardians of the public purse or have been only preserved by large fortunes from absolute ruin.

Now I ask this court do any of the considerations so forcibly put by these well-recognized writers on the English law apply to this defendant or to other persons in private station? Is there anything in his circumstances which makes it necessary that any offense which he may have committed should be tried in this august tribunal, with all attendant expenses, which, while absolutely ruinous, will yet be insufficient to enable him to cope with the overwhelming power brought to bear against him? Is he or any other private man in a condition to combat such a power on such a forum? Do any of the circumstances so forcibly laid down by these authors as the only justification for the violation of Magna Charta exist here? You have before you a citizen without any of the attributes of power which alone, according to the standard authors I have read, make such a proceeding proper under the English law. I therefore say that the proceeding is contrary to the true spirit of the English constitution. Having no written constitution, it is to their best writers we must turn to know what it is, and we find by those authors that according to English law, as it ought to be accepted and not as it has been abused, no private man can be subjected to such an ordeal.

There are great historic scenes in which impeachment has formed the background for the most illustrious characters. When Stafford, backed by royal authority, then held in awe by the people as divine, having trampled upon Ireland, had returned to England to become the king's chief counsel in all his arbitrary measures, it needed the or-

ganized power in the Commons and the courage of John Pym to bring this proud and powerful nobleman to justice. The ordinary tribunals were at his command, and no man in England would have dared to accuse him before them. But when the great machinery of the House of Representatives is turned upon a mere private citizen in this country, it is application of a great power to an unworthy purpose, and it is as derogatory to the dignity of the people as it is unjust to the rights of the citizen.

If such a proceeding would be violative of the English constitution as expounded by its accredited commentators, *a fortiori* is it an infraction of the fundamental principles of ours. These governments, which, having much in common, use a common, popular language and the same legal terms in the structure of their institutions, differ widely in their general character. The diverse theories upon which they are founded make practical divergences inevitable. In one the theory is that all power is derived from the king—the people have no rights except those granted by royal charter. Here the Government has no powers save those contained in its charter from the people. It is a government of limited powers; and, although terms are used in its charter which, like our mother tongue, have been borrowed from the mother-country, yet they are carefully limited in their use in the grants made to the Government. It results from this general principle that, as the United States had no judicial power before the framing of its present Constitution, it has none now not specifically granted in the Constitution. All judicial power, civil and criminal, was formerly held by the States, and such judicial power as this Government now exercises is derived by express grant in the Constitution itself; and it has been said by the courts again and again (beginning with the case of The United States *vs.* Worrall, 2 Dallas, 384, succeeded by The United States *vs.* Burr and The United States *vs.* Hudson and Goodwin, in 7 Cranch, 32, and the 1st of Kent, 331) that the courts of the United States have no common-law jurisdiction in criminal cases; and this is equally true of this as of other courts of the United States. The Supreme Court, in 7 Cranch, says:

> The courts of the United States can be vested with no power but what the power *ceded* to the General Government will authorize them to grant.

And the court says in the conclusion of its opinion:

> Certain implied powers must result to our courts of justice from the nature of those institutions, but jurisdiction of crimes against the state is not one of them.

Nor has jurisdiction ever been assumed by these courts in civil cases even, outside of the classes enumerated in the Constitution. This settles the principle upon which impeachment must be exercised. It is strictly confined to the cases expressly enumerated in the Constitution, as much so as any other court established by the Federal Constitution.

And this brings me to the consideration of what are the cases enumerated by this Constitution as within the power of impeachment. There is no other enumeration except what is contained in the fourth section of the second article, as follows:

> The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

The enumerated cases of persons, therefore, against whom this court can entertain articles of impeachment are, "the President, Vice-President, and all civil officers of the United States;" not persons who have been President, Vice-President, or civil officers, but only persons who can be at the time truly described as President, Vice-President, or as civil officers, and who can "be removed from office on impeachment and conviction of treason,"&c. "If there must be a judgment of removal," says Story, "it would seem to follow that the party was still in office;" but it is not necessary to rely upon this inference, plain and necessary as it is, because the only persons specified as subject to impeachment are *officers*, and it would be equally plain that only officers were amenable to impeachment if nothing was said in the section about removal and it were simply "that the President, Vice-President and all civil officers, shall be subject to impeachment for, and conviction of, treason, bribery," &c, because it is only by these descriptions as *officers* that they are made subject to impeachment. Hence, the only question before the court is whether the term "*officer*" can be applied to a person not at the time in the holding of an office.

And this has been the accepted construction. From the day when Blount was tried until now no attempt has been made to impeach a private citizen, and that not because there have not been plenty of proper subjects for impeachment if the law had authorized the proceeding against ex-officers. Within a few years past it is notorious that a number of officers who were under investigation and who were threatened with impeachment resigned to avoid it, and the proceedings against them were abandoned. Several judges were among the number, all whose names I do not now recall, and it is not necessary to do so, because the Senate knows to whom I refer, who resigned their places and thereby arrested the proceedings. So in New York, where the high court of impeachment is composed of the judges of the court of appeals and the senate, and the provisions of whose constitution, if not in identical words with those of the national Constitution, are substantially the same, an impeachment was dismissed against Judge Cardozo, within a few years, on the presentation of his resignation. The judiciary committee of the house of representatives of that State, composed of persons who will, I understand, be recognized by some of the managers as among the ablest lawyers of that State, reported against the power of impeachment of any person not actually in office. The language of the resolution in Fuller's case (the case referred to) is:

> That no person can be impeached who was not at the time of the commission of the alleged offense and at the time of the impeachment holding some office under the laws of the State.

This resolution and the accompanying report form part of the report of the trial of George G. Barnard, page 158.

I have examined all the constitutions of all the States with reference to the provisions therein contained on the subject of impeachment. With two exceptions, they correspond in substance with the national Constitution; and I have not learned that any impeachments against ex-officers have taken place under those constitutions.

Such a proceeding was not considered legal by the court of impeachment in New York, one of the great States, and whose judicial and legal talent will be recognized as among the foremost in this country. I am unable to state whether a different construction has been given to this provision in the other States; but I have not heard of any case where any party has been prosecuted in any of those States where the language of their constitutions is similar to that here under consideration. There is a noticeable difference, however, in the constitutions of two of the States, the States of Vermont and Georgia, from the Constitution of the United States with regard to impeachment, and I beg leave to call the attention of the court to it.

In that of Georgia, by the eleventh article and fourth section, it is provided that—

> The house of representatives has power to impeach all persons who have been or may be in office.

This provision is contained in the first constitution of Georgia, which was nearly contemporaneously formed with that of the United States.

By the Vermont constitution of 1793, part 2, section 24, it is provided that—

> Every officer is liable to be impeached, either when in office or after his resignation or removal, for maladministration.

This language, occurring in constitutions adopted nearly contemporaneously with the Constitution of the United States, shows that the language under consideration was not deemed sufficient to embrace persons who had been in office, and that in order to reach them it was deemed necessary to use other language.

Mr. SARGENT. I should like to propound a question to the counsel, which I send to the Chair in writing.

The PRESIDENT *pro tempore*. The question of the Senator from California will be read.

The Secretary read as follows:

> Was the resolution referred to by counsel for respondent in Barnard's case adopted?

Mr. BLAIR. It was adopted, I understand, by the house of representatives; and the prosecution against Fuller was abandoned, as it certainly was in Cardozo's case, wherein an impeachment like Barnard's, which had been found and was actually pending before the senate, was dismissed by the senate when his resignation was presented.

I wish to add, as matter of contemporaneous construction also, the language of Luther Martin, who, it is known to the Senate, was a distinguished member of the convention which formed our Constitution, and one of the ablest lawyers in our country. The language was used in the defense of Judge Chase, who was in office, and therefore the construction which he gave was not necessary to his client. He said, after quoting this language of the Constitution:

> This clearly evinces that no persons but those who hold offices were liable to impeachment.

That language will be found in the Annals of Congress for 1805, page 431.

I have examined every reference to the subject of impeachment found in Madison's reports of the debate of the convention, and I have an abstract of the book so far as it bears upon the subject. There was considerable controversy in the convention as to the tribunal before which impeachments should be prosecuted, whether before the Senate or before the Supreme Court, or whether before a court composed of judges from the States. A variety of propositions of that kind were made. There were several plans for a constitution introduced, all save Patterson's having provisions for the impeachment of the national officers or the Chief Executive. A series of resolutions, which embodied provisions to the effect "that the Executive shall be removable on impeachment and conviction for malpractice or neglect of duty," was reported by the committee of the whole house on the 20th of July, 1787. On that occasion Messrs. Pinckney and Gouverneur Morris moved to strike out that part of the resolution in relation to the Executive, and upon that motion considerable debate occurred, which I will not trouble the Senate with reading, but will state the general purport.

Messrs. Pinckney and Morris opposed impeachment altogether, upon the ground that with the short terms proposed it was unnecessary; and that if impeachment was prosecuted, unless the Executive was not suspended from office pending it, the malpractice and misgovernment would go on; and if he was suspended, the effect would be the

same as if he was convicted. The effect would be to put the Executive too much in the power of Congress.

Mr. Madison, Colonel Mason, Dr. Franklin, Mr. Davie, and other leading men in the convention insisted that impeachment was necessary for the protection of the public interests. The debate proceeded throughout upon the assumption that impeachment would be directed against no others than persons then actually holding executive power. There was no provision in the plan of Pinckney or in the plan of Paterson, of New Jersey, which were referred to the committee of detail with the series of resolutions on which this debate occurred, providing for any judgment of disqualification; the convention had not that subject before them; it was not a subject for their discussion or consideration. But it was assumed on all sides in the debate referred to that none but officers would be amenable to impeachment. The committee on detail, to whom these resolutions were referred, with the plans of Pinckney and Paterson, when they came to report on the 6th of August, added the article as an article providing for the punishment of the accused which now stands in the Constitution, disqualified him from holding office upon impeachment and conviction. In no part of the debate, from the beginning to end, was that a subject of discussion. And it has in fact no relation to the subject, which was simply whether the Executive should be removed by impeachment. It is but an addition to the judgment, which might or might not be added if impeachment should take place.

The case of Blount, to which I have adverted, determined that the disqualification clause did not enlarge the category of persons subject to impeachment. If the power given to adjudge disqualification could have that effect, the effect would be to subject anybody to impeachment, and the jurisdiction would be unlimited, which, as before said, the case of Blount and the whole philosophy of the Government negatives.

I call the attention of the Senate to extracts from Judge Story's Commentaries. In volume 1, section 803, Story says:

> It would seem to follow that the Senate on the conviction were bound in all cases to enter a judgment of removal from office, though it has a discretion as to inflicting the punishment of disqualification. *If, then, there must be a judgment of removal from office, it would seem to follow that the Constitution contemplated that the party was still in office at the time of impeachment.* If he was not, his offense was still liable to be tried and punished in the ordinary tribunals of justice, and it might be argued with some force that it would be a vain exercise of authority to try a delinquent for an impeachable offense when the most important object for which the remedy was given was no longer necessary or attainable. And although a judgment of disqualification might still be pronounced, the language of the Constitution may create some doubt whether it *can* be pronounced without being coupled with a removal from office. There is also much force in the remark that an impeachment is a proceeding purely of a political nature. It is not so much designed to punish an offender as to secure the State against gross official misdemeanors. It touches neither his person nor his property, but simply divests him of his political capacity.

At section 790 he says:

> From this clause it appears that the remedy by impeachment is strictly confined to civil officers—

That is the point I have been considering—

> of the United States, including the President and Vice-President. In this respect it differs materially from the law and practice of Great Britain. In that kingdom all the King's subjects, whether peers or commoners, are impeachable in Parliament, though it is asserted that commoners cannot now be impeached for capital offenses, but for misdemeanors only. Such kind of misdeeds, however, as peculiarly injure the commonwealth by the abuse of high offices of trust are the most proper and have been the most usual grounds for this kind of prosecution in Parliament. *There seems a peculiar propriety, in a republican government at least, in confining the impeaching power to persons holding office.* In such a government all the citizens are equal and ought to have the same security of a trial by jury for all crimes and offenses laid to their charge when *not* holding any official character.

Mr. CONKLING. From what do you read?

Mr. BLAIR. Story's Commentaries on the Constitution. Judge Story further says:

> To subject them to impeachment would not only be extremely oppressive and expensive, but would endanger their lives and liberties by exposing them against their wills to persecution for their conduct in exercising their political rights and privileges. Dear as the trial by jury justly is in civil cases, its value as a protection against the resentment and violence of rulers and factions in criminal prosecutions makes it inestimable. It is there, and there only, that a citizen in the sympathy, the impartiality, the intelligence, and incorruptible integrity of his fellows impaneled to try the accusation may indulge a well-founded confidence to sustain and cheer him. If he should choose to accept office, he would voluntarily incur all the additional responsibility growing out of it. If impeached for his conduct while in office, he could not justly complain, since he was placed in that predicament by his own choice; and in accepting office he submitted to all the consequences. Indeed, the moment it was decided that the judgment upon impeachment should be limited to removal and disqualification from office, it followed as a natural result that it ought not to reach any but officers of the United States. It seems to have been the original object of the friends of the National Government to confine it to these limits; for in the original resolutions proposed to the convention and in all the subsequent proceedings the power was expressly limited to national officers.

I call the attention of this court to this carefully weighed language of the most authoritative commentator upon our Constitution. I have already called attention to the proceedings in the convention upon which he comments, showing plainly that the framers of the Constitution never contemplated the prosecution of anybody not at the moment holding office. All the reasons upon which the proceeding was supposed to be necessary were applicable only to a man who wielded at the moment the power of the Government, when only it was necessary to put in motion the great power of the people, as organized in the House of Representatives, to bring him to justice. It is a shocking abuse of power to direct so overwhelming a force against a private man. It may be deemed by some of small moment, because it can only effect his disfranchisement. But the effect is to dishonor him, and it is simply tyranny to put this man's honor in peril by the application of that overwhelming force. The great authors of England, as well as the great commentator on our Constitution mentioned, ought only to be brought into action to arrest the wrong-doing of another power in the Government. The arena of impeachment is in fact a place in which a controversy takes place between the high powers of the Government. The only theory upon which it can be justified is to enable the people, massed and organized in their representative houses, to assail their oppressors, armed with the power of the Executive and the patronage and prestige which that gives them. Do you seek to prostitute that power to the oppression of a private individual, wasting his means by an action that, as this author says, has invariably ruined every private man who has been the subject of it in Great Britain. Is this a time, is this a country, is this a place, which would tolerate such an abuse? If this be the case, who would be safe that ever held an office? The great officers of this Government, the heads of Departments, are obliged to exercise their powers in a large degree by subordinates. If there is no limitation upon impeachment to persons holding office when a political adversary is installed in power, he may assail any man whom it may be thought necessary to assail for party or personal cause. We know, and it is one of the saddest commentaries upon poor human nature, that the subservient sycophant who basks in the smile of power is ever ready to prostrate himself before any other power which may succeed, and is ever ready to desert and betray the unsuccessful.

How eager are many who were obsequious enough to the defendant within the year now to rush forward to aid in his destruction! How they press forward to make their peace with his enemies now installed in office! How easy it would be for experts in the great Departments to suppress part of the truth and discolor what may be preserved, so as to pervert an honorable act to the destruction of men who may have held positions in them. If this court is to be opened to the persecution and prosecution of private men, and party passion and personal hate are to be invited to set themselves here upon private men because they may have been obnoxious officers, we have not yet passed by the days of tyranny. Man's nature has not changed. It is only by the limitations of constitutions and powers that a limit and a check can be put upon his malignant passions. If this Senate can be tempted to break down in moments like this the wise limitations which our great fathers put upon this sort of prosecution, they will have found an easy way to the oppression of the innocent by the hand of power.

From the remarks to which I have called the attention of the Senate it will be seen that a large body of the ablest men who sat in this convention were opposed to impeachment altogether, seeing in it a machinery of oppression. What did they suggest as a means and a sufficient means to meet the evil of abuse and corruption in office? Short terms of office, in order to let the people pass upon these supposed delinquents. That was the theory of Gouverneur Morris, Charles Pinckney, and many other able men in the convention which formed the Constitution. Their hand is seen in the provisions which limit this prosecution to persons in office. It was intended to permit those who were not willing to stand the brunt of party excitement for the moment to retire and wait for more auspicious seasons to vindicate themselves before the people.

When Andrew Johnson was being pursued here and when articles were found against him it was not for any crime; it was because he honestly adhered to the law and the Constitution as delivered by the fathers of the Government.

Suppose that he had chosen to retire and appeal to the people against the Senate and say, "I am adhering to the Constitution and my habitual enemies are seeking to overthrow it, and desire to sacrifice me because I oppose them;" could the Senate have gone on and disqualified him from holding office and thus taken away his power of appeal to the people, and thus have frustrated the design of the framers of the Constitution that a man might retire when faction triumphed and appeal to the patriotism of the people. The views of constitutional power which he then adhered to are believed to be sound by a great portion of the people, (and yet they were regarded as sufficient to justify his impeachment by almost the requisite number of Senators to convict and disqualify him.) I think it a fair construction of the Constitution that he might have resigned pending the impeachment, and thus have escaped liability to it, and been in a condition to make an appeal to the people, which Pinckney and Morris believed to be the safer tribunal, and hence the form of language adopted, and which admits of this action as not inadvertently adopted. The gap was purposely left open. We are not arguing now anything except in reply to what is asserted here as a reasoning.

It is argued that if a resignation should be permitted under such circumstances the people would be defrauded out of their rights to have the offender disqualified. The argument is that as the party ought to escape, the law does not prevent it. But this does not follow. It might be the common case of a *casus omissus*. But I contend that it is not a *casus omissus*, and point to the debates to show that it was never contemplated that any but persons holding office should be impeached, and also to show that, so far from being a fraud upon the jurisdiction of the Senate to resign pending an impeachment, those debates show that an influential part of the convention was opposed to impeachment altogether, and thought the better way was an appeal to the

people by the accused party; and it is, therefore, consistent with the views of all sides in the convention that a way of escape by resignation should be left to an accused officer in order to enable him to have his day when a more auspicious period for a fair and just judgment could be had upon his case, while effecting the only object contemplated, namely, the removal of the officer. No evil or abuse can result from the resignation. It is a purely imaginary ill which can arise from withholding the hand that would disfranchise a citizen and disable him from vindicating himself in a calmer moment.

As Judge Story says, from beginning to end of the debates on the Constitution there was no proposition considered but one of removal, and when the resolutions reported by the committee of the whole and the plans of Pinckney and Patterson, neither of which contained any provision for disqualification, were on 20th of July sent to the committee of detail, and that committee reported the disqualifying clause as the judgment to be rendered, they did not intend to disregard the known will of all sides of the house and report a provision inconsistent with their declared wishes. The committee of detail knew that the convention did not contemplate any one not actually in office. Hence the disqualifying clause was not intended to give any such power. That was the limitation which the whole debate shows was in the mind of every member of the convention. Hence you are not now asked to contravene the ideas of the framers of the Constitution in dismissing this proceeding.

I pass now to the second branch of the question presented by the order of the Senate, and that is on the materiality of the allegations of the second replication and of our rejoinder. We did not regard the replication as tendering a material issue, and for that reason we might, and perhaps ought to have, demurred; but having, as we believed, a conclusive answer to it in the rejoinder which we made, we chose that course, preferring that *in this maneuvering for position*—that is all it amounts to—our friends on the other side should not have the advantage of us.

It needs no argument to show that if only persons holding office are amenable to impeachment it must be charged in the articles that they hold office; and describing the defendant as "late Secretary of War" does not bring him within the description of persons given in the Constitution as amenable to impeachment. It would not be sufficient for them to have alleged that "the defendant does not now hold office, but was an officer at one time, and resigned in order to avoid impeachment." That would not have been sufficient certainly, for, if so, an ordinary court of justice might entertain jurisdiction of a person who had not been served with process upon an allegation that the defendant, hearing that it was intended to serve process upon him, had incontinently taken himself out of the jurisdiction of the court. There is no imaginable difference between the cases. We heard that they intended to impeach us, and, as the Constitution limited the prosecution to persons in office, we stepped over the line, just as a citizen of the United States who happens to be in New York, and learns that somebody there wants to serve him with a writ, betakes himself to New Jersey.

A man has a right to avoid law-suits. The defendant here had a right, however innocent he might have been, to avoid the ruin which the law-books tell him attend invariably the prosecution of a private person by this overwhelming power. No sensible man, unless he had ample means, would undertake a conflict of that sort if he could avoid it and character enough to stand before the country to justify his action. But the Supreme Court of the United States have settled again and again an analogous question, that a man residing in one State may convey his property to persons outside of it to give a court jurisdiction, provided he does it in good faith. That principle was decided in the case of McDonald *vs.* Smalley, 1 Peters, 120; also Smith *vs.* Kernochen, 7 Howard, 198; Jones *vs.* Lee, 18 Howard, 76; Briggs *vs.* French, 2 Sumner, 252.

The court also holds in those cases that a man may change his residence from a State in order to assert his title to property within that State in the Federal courts against persons holding it adversely, provided he changes his residence in good faith. Does anybody doubt that we resigned in good faith? Does anybody suppose or suspect that the defendant's was a colorable resignation; that he is to be restored to office when this prosecution ceases? Certainly not And therefore the case corresponds entirely in principle to the decision I have cited. If jurisdiction may be obtained by the voluntary act of a party done in good faith, no reason can be suggested why a jurisdiction may not be avoided by a voluntary act done also in good faith. We were inclined to demur to the original pleading, and the original pleading is defective in the point that I have already brought to the attention of the court in not describing this defendant as one subject to impeachment, and in describing him in fact as a person who is not subject to impeachment, because it says that he was "late Secretary of War."

On the third question which is presented for consideration by the order of the Senate I think little need be said. They cannot amend their articles by a new assignment in a replication. Nobody ever heard of an amendment of an indictment; and I may add that the court in the case of Barnard held that articles of impeachment were not amendable. I could, by looking over the books, perhaps find some accidental decision of a refusal of a court to allow an indictment to be amended. Indictments are quashed for defects which could be amended at any stage of a civil action as of course, and a new indictment must be found before further proceedings can be had. This, with the decision in the case of Barnard, at page 192, volume 1, that there could be no amendment of articles of impeachment, will dispose of the question suggested by the order of the Senate as to whether a necessary allegation not made in the articles could be supplied in the subsequent pleadings.

Mr. EDMUNDS. I move that the Senate sitting for this trial take a recess for thirty minutes.

The motion was not agreed to.

Mr. WHYTE. I move that the Senate sitting as a court take a recess for fifteen minutes.

The motion was agreed to; and (at two o'clock and thirty-five minutes p. m.) the Senate sitting for the trial of the impeachment took a recess for fifteen minutes.

The PRESIDENT *pro tempore* (at two o'clock and fifty minutes p. m.) resumed the chair.

Mr. SARGENT. I move a call of the Senate, as there is not a quorum present.

The PRESIDENT *pro tempore*. The call will proceed.

The Secretary called the roll, and 53 Senators were found to be present.

The PRESIDENT *pro tempore*. The managers on the part of the House of Representatives will now proceed with the argument. Senators will please give their attention.

Mr. Manager LORD. Mr. President and Senators, if I had any personal desire in the matter of postponement beyond the wish that this argument should not be divided in twain, it was that the managers might have some more time to condense their positions and authorities; but, as it is, I shall be compelled to read more from books than I otherwise should. In the first place I desire to call the attention of this court to some of the positions taken by the learned counsel who has just addressed you. First, as to the Cardozo case, I think altogether too much weight has been given to it. It occurred in the State in which I reside; and I think that the Senators from that State will concur with me when I say that the report of the judiciary committee in the assembly of that State was not regarded as at all conclusive upon the question of jurisdiction.

Then, again, the counsel called your attention to various authorities or suggestions that an impeachment of a citizen or the impeachment in fact of any person might prove ruinous to that person. I fail to see what that has to do with the question of the jurisdiction of this Senate, and, therefore, I proceed in the line of my argument to call your attention to the pleadings in this case. Before that, however, as the counsel on the other side did not state precisely the questions before this court, as I have understood them, I crave leave to refer to the order under which this argument is proceeding:

Ordered, That four managers on the part of the House of Representatives may be allowed to submit arguments upon the question whether the respondent is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office, and whether the issues of the fact presented in the pleadings are material, and also whether the matters in support of the jurisdiction alleged by the House of Representatives in the pleadings subsequent to the articles of impeachment can be thus alleged if the same are not averred in said articles.

For the proper consideration of these questions it is expedient that at this stage of the case I call your attention precisely to what the issues are. I do not intend to read the pleadings in full, but only such parts of them as may be necessary for the understanding of this point. Article 1 presents as follows:

That William W. Belknap, while he was in office as Secretary of War of the United States of America, to wit, on the 8th day of October, 1870, had the power and authority, under the laws of the United States, as Secretary of War as aforesaid, to appoint a person to maintain a trading establishment at Fort Sill, a military post of the United States; that said Belknap, as Secretary of War as aforesaid, on the day and year aforesaid, promised to appoint one Caleb P. Marsh to maintain said trading establishment at said military post.

* * * * * * *

That thereafter, to wit, on the 10th day of October, 1870, said Belknap, as Secretary of War aforesaid, did, at the instance and request of said Marsh, at the city of Washington, in the District of Columbia, appoint said John S. Evans to maintain said trading establishment at Fort Sill, the military post aforesaid, and in consideration of said appointment of said Evans, so made by him as Secretary of War as aforesaid, the said Belknap did, on or about the 2d day of November, 1870, unlawfully and corruptly receive from said Caleb P. Marsh the sum of $1,500, and that at divers times thereafter, to wit, on or about the 17th day of January, 1871, and at or about the end of each three months during the term of one whole year, the said William W. Belknap, while still in office as Secretary of War as aforesaid, did unlawfully receive from said Caleb P. Marsh like sums of $1,500 in consideration of the appointment of the said John S. Evans by him, the said Belknap, as Secretary of War as aforesaid, and in consideration of his permitting said Evans to continue to maintain the said trading establishment at said military post during that time.

Then in article 3:

Yet the said Belknap, well knowing these facts, and having the power to remove said Evans from said position at any time and to appoint some other person to maintain said trading establishment, but criminally disregarding his duty as Secretary of War and basely prostituting his high office to his lust for private gain, did unlawfully and corruptly continue said Evans in said position and permit him to maintain said establishment at said military post during all of said time, to the great injury and damage of the officers and soldiers of the Army of the United States stationed at said post, as well as of emigrants, freighters, and other citizens of the United States, against public policy, and to the great disgrace and detriment of the public service.

Whereby the said William W. Belknap was, as Secretary of War as aforesaid, guilty of high crimes and misdemeanors in office.

The defendant in this case answered to these articles:

And the said William W. Belknap, &c., says, that before and at the time when the said House of Representatives ordered and directed that he, the said Belknap,

should be impeached at the bar of the Senate, and at the time when the said articles of impeachment were exhibited and presented against him, the said Belknap by the said House of Representatives, he, the said Belknap, was not, nor hath he since been, nor is he now, an officer of the United States.

The House of Representatives duly adopted and filed a general and special replication. A part of the latter is as follows:

The House of Representatives of the United States say that the said William W. Belknap, after the commission of each one of the acts alleged in the said articles, was and continued to be such officer, as alleged in said articles, until and including the 2d day of March, A. D. 1876, and until the House of Representatives, by its proper committee, had completed its investigation of his official conduct as such officer in regard to the matters and things set forth as official misconduct in the said articles, and the said committee was considering the report it should make to the House of Representatives upon the same, the said Belknap being at the time aware of such investigation and of the evidence taken and of such proposed report.

And the House of Representatives further say that, while its said committee was considering and preparing its said report to the House of Representatives recommending the impeachment of the said William W. Belknap for the matters and things set forth in the said articles, the said William W. Belknap, with full knowledge thereof, resigned his position as such officer on the said 2d day of March, A. D. 1876, with intent to evade the proceedings of impeachment against him. And the House of Representatives resolved to impeach the said William W. Belknap for said matters as in said articles set forth on said 2d day of March, A. D. 1876.

To this replication the defendant rejoins, among other things, that the—

Chairman of said committee then declared to said Belknap that he, said CLYMER, should move in the said House of Representatives, upon the statement of said Marsh, for the impeachment of him, said Belknap, unless the said Belknap should resign his position as Secretary of War before noon of the next day, to wit, March the 2d, A. D. 1876; and, said Belknap regarding this statement of said CLYMER, chairman as aforesaid, as an intimation that he, said Belknap, could, by thus resigning, avoid the affliction inseparable from a protracted trial in a forum which would attract the greatest degree of public attention and the humiliation of availing himself of the defense disclosed in said statement itself which would cast blame upon said other persons, he yielded to the suggestion made by said CLYMER, chairman as aforesaid.

There is a joinder in demurrer and a surrejoinder by the House of Representatives, a portion of which surrejoinder I will read:

And the said House of Representatives, as to the first and second subdivisions of the rejoinder to the second replication of the House of Representatives to the plea of the defendant to the said articles of impeachment, wherein the said defendant demands trial according to law, the said House of Representatives, in behalf of themselves and all the people of the United States, do the like.

Now, I call the attention of this court to the fact that in regard to two of the allegations made in the second replication by the House the defendant tendered issues and the House of Representatives joined in such issues, and I shall argue to this court and produce authorities presently to show that the defendant, having thus tendered issues joined in by the House, he cannot go behind them, and cannot question the right of this tribunal to hear and determine the matters thus brought before it.

Then there are four special rejoinders which the defendant made. One of them I have read to this court. In regard to each of the other three not read, the House of Representatives tendered an issue to be tried by this court; and what does the defendant do? Does he say that these matters are improperly before this court? Does he say that any injury will result to him in having these facts fully and fairly and truthfully investigated by this tribunal? Not at all. So far from it, with great formality he tenders a *similiter* in the following words:

And the said Belknap, as to the surrejoinders of said House of Representatives to the third, fourth, fifth, and sixth rejoinders of the said Belknap to the second replication of said House of Representatives above pleaded, whereof said House of Representatives have demanded trial, the said Belknap doth the like.

We say that they are estopped upon every principle known to legal proceedings, known to the trial of cases in court, from attempting now to evade these issues. It was very proper on the part of this tribunal to raise this question, if it saw fit; but I apprehend, when the authorities are reviewed upon this point, it will be seen that it was too late for anybody to raise this question. Of course any question involving the jurisdiction of this court may be raised at any time; but on questions which do not involve its jurisdiction, but only facts pertaining thereto, no matter in what form of pleading these facts get before it, it is too late, when both parties have so tendered issues to be tried by this tribunal, for the defendant or for any member of this court to prevent such trial; and this I shall show abundantly by the authorities. If otherwise this tribunal, the most august in the land, supposed above all others capable of reaching to the direct truth regardless of forms and ceremonies, has not the power of a court of a justice of the peace; for I affirm that on the other side not one authority can be found, in the whole range of authorities, showing that when issues are joined on questions of fact before the most inferior court it has not the power to try and determine them; and therefore the question amounts to this: Has this tribunal less authority than the most inferior court in the United States, or in any other land?

The first authority I introduce upon this point affirms this doctrine, that the plaintiff in his replication may introduce new matter to fortify his declaration. Now what is the question before this court? The very resolution gives us the victory in this regard; it assumes that such facts are in aid of a pertinent question before this court in support of its jurisdiction. I admit we could allege no new offense in this way; we could tender no new or distinct issue upon the merits as to the crime or misdemeanor which this defendant committed; but the question which he raises is a dilatory one, it is not one relating at all to his guilt or his innocence. It is a question of jurisdiction. He raises that question and affirms certain facts relating thereto; and we, in aid of that jurisdiction, bring in certain other facts relating thereto. This is the true statement of the case; we did what we have done in aid of the jurisdiction, and this the pleader may always do.

It was decided in Hallett *vs.* Slidell, 11 Johnson's Reports, page 55, and has been in other cases, that—

A plaintiff in his replication may introduce new matter to explain and fortify his declaration.

I choose to read this to the court from the case in order that nothing may be taken upon what I have said, because while of course I intend to state things correctly, yet one may be mistaken in attempting to state the precise language from a book:

A plaintiff in his replication may introduce new matter to explain and fortify his declaration; and where such new matter is introduced, he may conclude with a verification. (11 Johnson's Reports, page 55, *supra.*)

I also call the attention of the court to Gould's Pleadings, chapter 3, section 170, page 142. This relates to a point which the counsel suggested, and that is that in these pleadings we use the term "late Secretary of War." I shall show presently in this argument that this is utterly immaterial in any view of the case. We had the right to state the precise fact, and if it appears, as I think it most abundantly will, that the law takes no notice of fractions of a day and that by well-settled principles and a long and unbroken series of decisions he should have resigned the day before he was impeached in order to escape the penalty of his crime, yet I want to show to this court at the outset that the word "late" makes no possible difference in dealing with the facts and questions of this case. It is but surplusage, though perhaps in one view a proper allegation. If mere surplusage, this is the law:

Surplusage, by which is meant matter that is altogether superfluous and useless, does not in general vitiate the pleadings, even in point of form, the maxim being *utile per inutile non vitiatur.* (Gould's Pleadings, chapter 3, section 170.)

It has been decided in Shook *vs.* Fulton, 4 Cowen's Reports, page 424, that where two pleas were pleaded, neither of which was a defense standing alone, though both joined together would be a defense, yet if the plaintiff replied it cured the difficulty. What was the situation in that case, decided in the supreme court of the State of New York under the old *régime*? As the pleas put in separately did not amount to a defense, the plaintiff could have demurred or could have made a motion to strike out, and yet instead of this he joined issue and cured the difficulty. When I show to this court, as I shall presently, that on account of its high position and of the magnitude of the questions which it has to decide, the ordinary rules of pleading do not control it, then do not these cases from the common-law courts show that this question of the form of pleading facts is one of no consequence in this tribunal, having nothing to do with the question of jurisdiction or with the real merits of the case?

The defendant in this case saw fit to raise the question of jurisdiction, a jurisdiction which would be assumed, because this court, by the Constitution of the land, is the court for the trial of impeachments; and therefore we were not compelled to allege in the articles that it had jurisdiction. It would have been entirely surplusage, at least entirely unnecessary, to do so; and when the defendant steps in and says this court has no jurisdiction on account of some fact personal to himself or otherwise, we have the right to do as we did do in our second replication, state facts in aid of the jurisdiction, which would be assumed, as before stated, until called in question.

On the question of pleadings in this court I call attention in the first place to Rawle on the Constitution, page 205, and the chapter on impeachments, in which he says:

Articles of impeachment need not be drawn up with the precision and strictness of indictments. They must, however, be distinct and intelligible. No one is bound to answer to a charge so obscure and ambiguous that it cannot be understood. Additional articles may be exhibited perhaps at any stage of the prosecution, certainly before the defendant has put in his answer or plea.

Now you will see, Senators, one reason why I read the pleadings in this case. Is there anything in these pleadings that is not distinct and intelligible? Is there anything so obscure and ambiguous that the defendant and his learned counsel did not understand the allegations? Could the English language more correctly charge the bribery and crimes which this man, if these articles are true, has committed, than has been done in these articles? And are not all the facts, whether in the articles or in the replication or in the surrejoinder, distinctly and fairly before this tribunal? And is this tribunal, in the presence of this nation and of the world, to refuse to decide these facts on the ground that the pleadings are not formal, when all of the parties are before it and have voluntarily waived all technical objections which might have been taken before joining issue?

Is this the tribunal to shelter itself behind such a technicality? I apprehend not.

I call attention next to 1 Story's Commentaries on the Constitution, § 808:

§ 808. The articles thus exhibited need not, and indeed do not, pursue the strict form and accuracy of an indictment. They are sometimes quite general in the form of the allegation; but always contain, or ought to contain, so much certainty as to enable the party to put himself upon the proper defense, and also, in case of an acquittal, to avail himself of it as a bar to another impeachment. Additional articles may be exhibited perhaps at any stage of the prosecution.

In regard to the question of additional articles, I will say there never have been articles of impeachment drawn, so far as I have

been able to discover—and I presume the researches of the counsel on the other side has resulted in the same conclusion—without the reservation of the right to present such further articles as the House of Commons or the House of Representatives might see fit to present. I assume, therefore, in this case that it will be held by the Senate that unquestionably we might have presented further articles; and therefore, even if we had stated another offense, the matter would—if issue had been taken—have been before this court. If we had charged upon him a violation of duty in regard to some other post-tradership, if we had charged in the replication any other high crime or misdemeanor, and he, instead of objecting, had joined issue, that question would be fairly before this court, just as much as though presented by additional articles. But we are not in this position, and need not go to this length, because, I repeat, our position is that, he having challenged the jurisdiction of this court, we had the right to state any fact in aid of that jurisdiction. This principle is as old as the common law. It is not a departure; it is not a new assignment, as the learned counsel suggested; it has no relation to a departure; it has no relation to a new assignment. It is simply the statement of facts, which could always have been stated in all the ages of the common law, in aid of a fact alleged in the original articles, and which the other side disputes.

Mr. MITCHELL. Mr. President, I should like to make an inquiry of the manager which I send to the Chair.

The PRESIDENT *pro tempore*. The Senator from Oregon propounds an inquiry which will be read.

The Chief Clerk read as follows:

Does the doctrine of the law that the plaintiff may introduce new matter to explain and fortify the position taken in the declaration apply in criminal cases?

Mr. Manager LORD. It applies in cases of impeachment. This is partly a civil and partly a criminal proceeding. In all the modes of procedure, this is a civil proceeding. In regard to the attitude of the defendant and the punishment to be pronounced upon him, it may be called a criminal proceeding; and perhaps I concede too much in saying this, because some writers have gone so far as to affirm that in no sense is the removal and disqualification directed and allowed by the Constitution a punishment; they say these sentences simply protect the people against themselves and against a bad and corrupt officer after he is impeached; the Constitution thrusts such a one out of his office upon his conviction; and when he has been guilty of crimes and misdemeanors which show that he is polluted, that he is intrinsically dishonest, the Constitution permits the Senate to say that he shall be forever disqualified. Therefore we might say that this is not a criminal proceeding either in the sense of trial or of punishment; but inasmuch as replications and rejoinders and surrejoinders are allowed, so far it is a civil proceeding. Who ever heard of a replication or a rejoinder or a surrejoinder or a *similiter* under an indictment? Therefore we are not to be brought within that narrow range; no legal right is to be crushed out of this case; the defendant is not to be permitted to escape because in some of its analogies this may be regarded as a criminal proceeding. I affirm in regard to the pleadings that in all respects it is a civil proceeding, and more than that, that there is far more latitude, as I shall presently show, in this court than there is in any lower court in regard to pleading.

I call the attention of the court now to the report of a committee of the British House of Commons, a learned and intelligent committee, a committee which has made a report that will go down with the ages, and I apprehend be received as the law on this subject so long as civilization exists. I call attention to Burke's Works, seventh volume, page 490, where the committee consider the "rules of pleading in courts of impeachment." I never have heard yet of any rule as to pleadings in a criminal court besides the indictment and the plea. Sometimes a defendant puts in what we call a special plea. If a question of jurisdiction is raised, it is usually raised *ore tenus*. But what are the rules of pleading in this court? Such committee say:

> Your committee do not find that any rules of pleading, as observed in the inferior courts, have ever obtained in the proceedings of the high court of Parliament, in a cause or matter in which the whole procedure has been within their original jurisdiction. Nor does your committee find that any demurrer or exception as of false or erroneous pleading hath been ever admitted to any impeachment in Parliament as not coming within the form of the pleading.

The members of this court know the distinguished character of Mr. Walpole not only as a lawyer, but as a statesman.

Mr. Walpole said—

Page 497—

> "Those learned gentlemen (Lord Wintoun's counsel) seem to forget in what court they are. They have taken up so much of your lordships' time in quoting of authorities and using arguments to show your lordships what would quash an indictment in the courts below, that they seem to forget they are now in a court of Parliament, and on an impeachment of the Commons of Great Britain."

And page 501—

> A great writer on the criminal law, Justice Foster, in one of his discourses, fully recognizes those principles for which your managers have contended, and which have, to this time, been uniformly observed in Parliament. In a very elaborate reasoning on the case of a trial in Parliament (the trial of those who had murdered Edward the II) he observes this: "It is well known that in parliamentary proceedings of this kind, it is, and ever was, sufficient that matters appear with proper light and certainly to a common understanding, without that minute exactness which is required in criminal proceedings in Westminster Hall. In these cases the rule has always been *loquendum et vulgus*."

We say, therefore, if the articles are defective and the second replication not of strict right, all is cured by rejoinder, surrejoinder, and *similiter*. And in regard to the main question presented by the second replication—not the most conclusive question perhaps, but it may be called the main question of the second replication—namely, whether this defendant has the right to evade the Constitution and defeat its operations by his own will, he confesses and avoids. He admits on the record that he resigned for the purpose of evading this impeachment. It is true he says he was not guilty, and resigned for other purposes; but that is utterly immaterial to this question, because he does admit, I repeat, that he resigned for the purpose of defeating this impeachment.

I will not stop, Senators, to answer the suggestion of counsel, that the chairman of that committee had the right, in behalf of this nation, and in behalf of the House of Representatives of the United States of America, to make a contract with the defendant that if he would get out of the office of Secretary of War before a certain hour he should not be impeached for these high crimes and misdemeanors, which, if these articles are true, had polluted him for years, and made him of all men that have ever appeared in a court of impeachment the most unfit to hold civil office. I deny such a right. I am astonished that counsel of respectability and of high standing should stand in this court and assume for a moment that the chairman of a committee had a right to make any such infamous contract; but that is one of the issues. I was surprised the more to hear it stated here, because it is one of the issues. The allegation of such agreement we absolutely deny; we deny that any *such contract was made*. By our surrejoinder we tender an issue upon that question, and it is accepted by the other side by filing their *similiter*.

Reference has been made also to the fact that the Constitution leaves the defendant subject to an indictment, and that an indictment may be found against him. The two proceedings, Senators, are entirely and absolutely distinct. One has nothing to do with the other, for the statute to which the counsel referred (section 1781 of the Revised Statutes) does not pretend to change the law or rules of impeachment.

Now I wish to call the attention of this tribunal to another consideration; and that is that on *this question* you are not to give the defendant the benefit of any of those rules which are provided for criminal cases. Assuming, for the sake of the argument, that he is accused as a criminal and that this proceeding is a criminal proceeding, so that when we get to the merits he may say that he is entitled to the presumption of innocence, that he is entitled to be defended by counsel—and certainly he has illustrious counsel—that he would be entitled to the right of challenge if before a jury, and is entitled to confront the witnesses; assuming that this was an indictment and he was before one of the courts of the land and should stand up and claim all these privileges, they of course would be given to him, and we do not care about challenging them here. For the sake of the argument, we admit that here upon the merits he has all these privileges, so far as applicable in this court. What I say is that on this question of jurisdiction he has no such privilege; on the contrary, he has not as many privileges, as the authorities will show, as he would have in a civil action.

This is not one of the questions over which the law watches with such jealousy to guard the rights of a defendant. So long as it is true that no case of fact can be made, no evidence can be offered under which speculation may not peer; so long as it is true that sometimes innocent men suffer; so long as that maxim exists in our law that it is better that ninety-nine guilty men go free than that one innocent man suffer, the common law will allow a person accused of crime the presumption and privileges we have referred to. But what have these questions to do with a mere abstract question of law? The question now presented to you has nothing to do with his guilt or innocence; it has nothing to do with his imprisonment; it has nothing to do with any question personal to himself. It is purely a legal one, and must be considered precisely as though it arose in a civil action, excepting as before suggested that he has not all the privileges in this regard that he would have in a civil action. When a defendant in a criminal action raises a dilatory plea it does not receive the consideration which it does in a civil action.

What is the object in pleading in criminal actions? Allow me to call the attention of the court to 2 Archbold's Criminal Practice and Pleadings, sixth edition, volume 2, page 206:

> The object of pleading, whether in civil or criminal actions, is to inform the parties of the facts alleged by each against the other with such clearness and distinctness as to enable them to prepare for the trial of disputed facts or for the application of the law to those which are admitted. In its application to criminal cases, it is a statement of a crime imputed to the prisoner with such a particularity of circumstances only as will enable him to understand the charge and prepare for his defense, and as will authorize the court to give the appropriate judgment upon conviction.

At common law a defendant in a criminal action was not allowed to plead in abatement as in civil action, (1 Archbold, page 110; Barber's Criminal Law, page 343,) and cannot tender a bill of exceptions. (Garbett's Criminal Law, volume 2, page 521.) Therefore you see, Senators, that while the law has always been watchful to protect life and liberty, intending that no innocent man should be falsely accused of crime, yet in regard to the surroundings of the case, in regard to the mere question of pleadings, he has certainly had no more privilege and certainly has now no more privilege than in a civil action.

Bishop on Criminal Procedure, volume 1, page 324, says:

The extreme kind of certainty, called certainty to a certain intent in every particular, is required by the tribunals when a party pleads any matter not entering into the merits of the case but going merely to defeat the pending proceeding against him. And this kind of certainty is demanded on the very just ground that he who stands on a technicality to ward off inquiry into his conduct in distinction from defending himself upon the merits shall himself stand very technically erect.

Allow me to call attention for a moment to an authority introduced the other day by the learned counsel for the defendant, from Cushing's Parliamentary Law, in which it appears that Mr. Burke was called to account for stating certain things against the defendant, Warren Hastings, not charged in the articles of impeachment. I hardly know why this was introduced, it is so utterly different from this case. In that case, without any allegation in the articles, without any allegation in the replication, without any issue joined upon any fact, Mr. Burke saw fit in his philippic to arraign the defendant for crimes not charged; and this the House of Commons said he had no right to do. I have sufficiently said in this case that the matters we propose to try are all in the pleadings.

One branch of this argument on our part will be very brief. The learned counsel, Mr. Blair, suggested that we should be driven to the position of asserting that a citizen who had never held office was impeachable. We claim no such thing. We claim first, and admit, that the authorities have settled that a mere citizen cannot be impeached; and if the authorities had not settled it, the Constitution, not by express words but by its intent, does exclude the idea of impeachment as against a mere private citizen.

But at this point I may as well inquire whether the Constitution, in regard to a civil officer, is a mere rope of sand? If we find by the intention of the Constitution that a man cannot be impeached while a mere citizen; if that is its obvious intent, notwithstanding the generality of the language, why then may we not, by applying the same rule as to its intent, show that the Constitution never intended that any person, when his sin finds him out, shall be permitted to abnegate or defeat that Constitution in this regard?

There are cases—such is the judgment of the law, such was the judgment of the common law, such is the judgment of the Constitution—there are cases where a man has shown such depravity that he ought to be disqualified for all the days of his life. Now, shall this provision of the Constitution, Senators, be defeated by the will of the criminal? It is answered that here is a statute which provides that if found guilty he shall be disqualified. That statute certainly is a mere "rope of sand." The whole disqualification can be removed by the pardon of the President, (but you will recollect that the President cannot pardon in a case of impeachment,) or the Legislature may repeal the law under which he was convicted and restore him to citizenship. Therefore, if it is true that sometimes the people need protection against themselves; if it be true that a far-sighted and ambitious man may, years after his crimes have been committed, ride into power on some wave of fanaticism or corruption; if this be true, so that the Constitution wisely provided that a man thus guilty of disqualifying crimes should forever be disqualified, then ought we to be asked to fall back on a statute which may be at any time repealed or the force of which the President may at any time remove by a pardon?

But there are high crimes and misdemeanors not punishable by statute or any law, and I will call the attention of the Senate for a moment to the remarks in this regard of one of the counsel in the Blount case. I read from page 2316 of the Annals of Congress, Fifth Congress, volume 2:

It seems to me—

Says the learned counsel—

that the power of impeachment has two objects: First, to remove persons whose misconduct may have rendered them unworthy of retaining their offices and, secondly, to punish those offenses of a mere political nature, which, though not susceptible of that exact definition whereby they might be brought within the sphere of ordinary tribunals, are yet very dangerous to the public.

Now, that this matter may be fully before the Senate, I desire to call attention to all the provisions of the Constitution relating to impeachment, for the purpose of showing beyond all reasonable doubt—though we are not driven to that point here—that it was the intention of the convention which framed the Constitution and the intention of the States in adopting it to allow a person to be impeached who had held office after he should have gone out of office. I have carefully copied word for word in their order all the provisions of the Constitution relating to impeachment.

First, the House of Representatives "shall have the sole power of impeachment." The last clause of section 2, article 1.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the President of the United States is tried the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Last two clauses of section 3, article 1.

The President—

Shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

First clause, section 2, article 2.

The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Section 4, article 2.

The trial of all crimes, except in cases of impeachment, shall be by jury.

Last clause of section 2, article 3.

Let me call your attention, Mr. President and Senators, particularly to this point. What is there in all these provisions that limits the power of impeachment? If we adopted in regard thereto by these provisions the rules of the common law, why is not the common law in force in regard to impeachment? Not by reason of any of these words that I have read to you, not because the Constitution says that the punishment shall not go beyond removal from office and disqualification, for its object was to prevent attainder and confiscation; and when it says that the punishment shall, at least in the case of one in office, extend to removal from office, it does not say but that any inferior sentence may be pronounced. Therefore, so far as the clauses read are concerned, when you put them in connection and consider them, you will find that there is nothing to prevent the House of Representatives of the United States exercising the right to impeach the citizen as fully as can the House of Commons of Great Britain. But why do we say that no mere citizen can be impeached? Simply because of the obvious scope of the Constitution, because we find another provision which guarantees to every citizen the right of trial by jury, which cannot be taken from him except by express enactment; because we find provisions which guarantee to the States the rights which they have not conferred and confine the United States to the rights which are conferred; and therefore when we take into view the whole scope and intent of the Constitution we find that impeachment was only intended for *a public officer, either while in office or after he has left office*, for offenses committed while in office.

I may say in passing, if the court please, that while in my view of the Constitution if the defendant here should be convicted, an inferior sentence, like that of censure, might be pronounced, yet I apprehend no such question will arise in this case, because, if it be true, as charged in the articles, that he is guilty of this long series of criminal transactions, if he has thus polluted his honor and his hands with bribes during these long years, then, as before suggested, if a case can be conceived in which disqualification was demanded it is this case. Therefore, we claim that the limitation of the Constitution is not as *to time*; it simply relates to a class of persons; and the word "officer" is used as descriptive precisely as it is used in the very statute to which the counsel referred. If it be true because the word "office" or "officer" is used in the Constitution, without saying anything about a person after he is out of office, that the defendant is not impeachable, then he cannot be indicted, because the statute relating to his indictment simply speaks of him as an officer.

What is the real intent and meaning of the word "officer" in the Constitution? It is but a general description. An officer in one sense never loses his office. He gets his title and he wears it forever, and an officer is under this liability for life; if he once takes office under the United States, if while in office and as an officer he commits acts which demand impeachment, he may be impeached even down to the time to which the learned counsel, Mr. Carpenter, so eloquently referred the other day—down to the time that he takes his departure from this life.

It is supposed by many that because an officer must be removed, no judgment can be pronounced without pronouncing the judgment of removal. This it seems to me is a very great error. If he is in office, of course under the Constitution he must be removed; but if out of office, the sentence of disqualification or some inferior sentence may be passed upon him, for the obvious reason that the sentence is divisible. This was distinctly held in the Barnard case, to which reference has been made. In that case the court proceeded unanimously to vote that he should be removed from office; but when the question came up on the other point, shall he be disqualified? several members of the court voted in the negative.

I do not see, then, any possible view in which there is difficulty; and the learned counsel on the other side will not be able to create any difficulty excepting under the claim that a person in office, having so conducted himself as to be worthy of impeachment, finding that it is impossible to escape the facts or pervert them, may, I repeat, defeat the Constitution for the purpose of preventing his punishment.

It is said that under the parliamentary law this House could not pronounce judgment until the House of Representatives demanded that such judgment be pronounced. Suppose that Mr. Belknap in this case had not resigned; suppose he had made up his mind that he would not confess this sin, that he would not attempt to evade impeachment, but that he would prove the real facts in the case as he alleges them—and certainly if they are true they are susceptible of proof, even though you assume that he cannot be sworn as a witness, or that his wife cannot be sworn; yet if she had this large fund of which he supposed he was receiving the interest, in some way this fact could be proved, brought to the attention of the Senate—suppose he had seen fit to take that course, and stood up and said, "I am innocent; I demand a trial on the merits;" and suppose that he had been convicted, and this House was waiting for the demand of the other House to have judgment pronounced upon him; or suppose that this learned tribunal had retired or cleared these galleries for the

purpose of ascertaining what judgment ought to be pronounced; if the logic of the other side is true, after such conviction, by an arrangement with the President, he could resign his office and have the resignation accepted, and defeat the judgment. It comes to this. To this conclusion you must come, if you come to the conclusion that the Constitution intended that no officer should be impeached after he had retired from the office.

But we have authority upon this point. Of course the nearer we come to the age of the Constitution the more we can gather from men who aided in the work of the Constitution or men who were their contemporaries, as to the real intent of the instrument. Rawle, a celebrated lawyer of Pennsylvania, known to some of the counsel, the author of a work upon the Constitution, the compiler of five volumes of reports, and I believe of some nineteen more in connection with Mr. Sergeant, says, and I call the particular attention of Senators to this:

From the reasons already given it is obvious that the only persons liable to impeachment are those who are or have been in public office. All executive and judicial officers, from the President downward, from the judges of the Supreme Court to those of the most inferior tribunals, are included in this description.—*Rawle on the Constitution*, page 203.

I also call the attention of the court to the language of Alexander Hamilton, in the Federalist, which, although not quite as conclusive, is nearly as much so as that which I have just read. I call attention to pages 300 and 301, No. 65, where Hamilton says:

A well-constituted court for the trial of impeachments is an object not more to be desired than difficult to be obtained in a government wholly elective.

* * * * * * *

The delicacy and magnitude of a trust which so deeply concerns the political reputation and existence of every man engaged in the administration of public affairs speak for themselves.

* * * * * * *

What, it may be asked, is the true spirit of the institution itself? Is it not designed as a method of national inquest into the conduct of public men? If this be the design of it, who can so properly be the inquisitors for the nation as the representatives of the nation themselves?

When Alexander Hamilton, that logician and scholar, that man who always measured his words so well, spoke of impeachment as to *public men*, what was in his mind? Did he imagine simply that officers actually in office could only be impeached? I apprehend not. I apprehend the learned counsel, Judge Black, who answers in the affirmative, has not ceased to be a public man because he is out of office. He is enrolled to-day in the common judgment of mankind as among the public men of this country. Alexander Hamilton was not a loose writer in a matter of this kind, in a matter where he bent every endeavor of his intellect to speak accurately and concisely. He was not a man who would speak of *public men* when he meant only a person holding office.

This claim is not a singular one, if the court please. If a person has usurped an office and a *quo warranto* is issued against him and he resigns, still the *quo warranto* proceedings may go on to judgment, notwithstanding his resignation. For authority I refer to King *vs.* Warlow, 2 Maule and Selwyn, 75; and King *vs.* Payne, 2 Chitty, King's bench, 367.

This, if the court please, is all that I have deemed necessary to say on the question of impeachment generally.

I now propose to call the attention of the court to the other questions of this case referred to in the order of the Senate. The first question of the second replication is: "Can the defendant escape by dividing the day into fractions?" This question is also presented by the articles and plea. The allegation on page 5 is not denied. Therefore, as I propose to show this court by an unbroken series of decisions that the law does not permit a day to be divided into fractions in such a case as this, and if it be true that the defendant was Secretary of War on the 2d of March, on any part of that day, and therefore impeachable, then that question, perhaps, can be argued independent of this replication. I propose, now, to argue the question under the second replication. The authorities will bear upon both the plea and replication. First, I say a judicial act dates from the earliest minute of the day in which it is done. I call the attention of the court to 3 Douglas, page 273, the case of Lord Porchester *vs.* Petrie, because it is one of the earliest cases, though not as decisive upon the point as some others to which I shall presently make reference.

The reporter adds, he heard that it was adjudged that the plaintiff had the better right, because he claimed to be in under a judgment, and all the term is only one day in law. In that case the attempt was to make a fraction of a day, and the defendant pleaded that his statute was before the judgment, but the court would not allow it.

Therefore, under the common law, such was the weight given to a judgment that where a statute was passed on the same day and before the judgment the judgment related back and defeated the statute.

I next call the attention of the court to Edwards *vs.* Reginam, 9 Exchequer, 631, 632. This is a decision by Coleridge, justice:

The doctrine that judicial acts are to be taken always to date from the earliest minute of the day in which they are done stands upon ancient and clear authority, and upon this doctrine alone the present judgment may well be sustained. The Crown not being bound by the provisions of the statute of frauds respecting writs of execution, or by the statutes of bankrupts, the writ of extent, like any other judicial writ of execution at common law, takes effect upon the day of its *teste*, and is in operation for the whole of the day, from the earliest to the latest minute, without any division. This is a general rule, quite apart from all considerations of prerogative, and was recognized and acted on in the much-considered and celebrated case of Shelley. There Edward Shelley covenanted to suffer a recovery on the 9th of October, the first day of the term; he died between five and six in the morning; afterward on the same day the recovery passed with a voucher over, and immediately after judgment given an *habere facias seisinam* was awarded. The Lord Chancellor and all the judges of England held that the recovery was well suffered, though the death took place before the court sat, "because the record is to be understood of the whole day, and relates without division to the first instant of the day." And, although the court will inquire at what time a party does an act, as filing a bill, or delivering his declaration, and for that purpose will take notice of the usual hours for sitting, (see 2 Levinz, page 141, 176; Buller's Nisi Prius, page 137,) it is otherwise with regard to a judicial proceeding. This distinction is pointed out in Lord Porchester's case by Lord Mansfield, and recognized by Buller, J., in Pugh *vs.* Robinson.

I next call the attention of the court to the case of the Queen *vs.* The Inhabitants of St. Mary, 1 Ellis and Blackburn, page 816. In reading these cases I wish again to remind the court that on this question the law is to be held precisely as though the action was civil; that no intendment whatever is to be held in favor of the defendant; and that if there was a judicial proceeding in his case, occurring on the same day that he performed the personal act of resigning, the judgment reaches back of it, and he was properly impeached:

A building was let, at £30 per annum, to C by a written agreement stating that C had taken it "from the 30th day of September, 1850;" "the tenancy is for one year, commencing on the 30th day of September instant," (1850.) C entered at noon on 30th September, 1850, and quitted at four in the afternoon of 29th September, 1851.

Held, that C gained a settlement by renting and occupying a tenement "for the term of one whole year at least," within statute 1, William IV, chapter 18, section 1.

Let me call the attention of the court more particularly to what this case is. Here was a statute which provided that before a person could obtain a residence in any particular place he must have occupied a tenement there "for the term of one whole year *at least*." He took a lease for a year, which ended on the 29th day of September, 1850, and quit the premises at four o'clock in the afternoon of the 29th of September. On page 827, Lord Campbell, chief justice, says:

I am glad that we have decided cases, on an act of Parliament similar to that before us, in favor of the only view which is consistent with common sense. Any one, talking of these facts in ordinary language, would say that the pauper occupied for a year. I would abstain from so holding if any recognized rule or direct decision militated against it; but really law and sense concur. The general rule is that the law does not regard fractions of a day.

I next call attention to a case directly in point as to the effect of a judicial act, in Wright *vs.* Mills, Hurlstone and Norman, 490–493. I will read the syllabus in order to get the facts before the court, and then I will read what the court says:

Judicial proceedings are to be considered as taking place at the earliest period of the day on which they are done. Therefore, where judgment was signed at the opening of the office at its usual hour, eleven a. m., and the defendant died at half past nine a. m. on the same morning: *Held* that the judgment was regular.

At page 490 the court say:

Pollock, C. B.—We are all of opinion that this rule must be made absolute. The principal authority on the subject is the case in the exchequer chamber of Edwards *vs.* Reginam—

Which case I have already read.

It was there expressly stated that the court will inquire at what time a party does a particular act, for instance, filing a bill or delivering a declaration; and for that purpose will ascertain the hour at which the courts were sitting, &c.; but the court lays down this rule: "It is otherwise with regard to a judicial proceeding." And Shelley's case is there cited, where a recovery suffered on the first day of term was held good, although the party had died that morning before the court sat. I consider that case of Edwards *vs.* Reginam as an undoubted authority, to which we ought to conform. Now, it appears to me that signing judgment is a judicial proceeding, and consequently to be considered as having taken place at the earliest period of the day when it is done, and therefore not invalidated by what occurred in the present instance.

In Blydenburgh *vs.* Cotheal, 4 Comstock's New York reports, page 418, the court held—

Fractions of a day are not in general regarded, except for the purpose of preventing injustice.

Therefore, an appeal perfected before the judgment-roll is filed, but on the same day, is regular.

Bronson, chief justice, says:

As a general rule the court does not inquire into the fractions of a day, except for the purpose of guarding against injustice. (Small *vs.* McChesney, 3 Cowen, page 19; Clute *vs.* Clute, 3 Denio, page 263.) We think that a sufficient answer to this motion.

In the case of Small *vs.* McChesney, 3 Cowen, the supreme court of the State held in these words:

The whole proceeding is on the same day, which the law will not divide into fractions unless this be necessary for the purpose of guarding against injustice.

In Jones *vs.* Porter, 6 Howard's New York Reports, page 236, the court held in these words:

This rule will be adhered to in considering a jurisdictional question—

And held the question of jurisdiction involved in the case of Blydenburgh *vs.* Cotheal, 4 New York, page 418. It only remains to show that which I need not perhaps take any time to show, that the impeachment by the House of Representatives was a *judicial act*.

In 2 Wooddeson's Lectures, the House is called in this regard "the grand inquest of the nation."

I refer also to Tomlin's Law Dictionary, title, "Impeachment:"

An impeachment before the Lords by the Commons of Great Britain in Parliament is a prosecution of known and established law, and hath been frequently put in practice, being a presentment to the most high and supreme court of criminal jurisdiction by the most solemn grand inquest of the whole kingdom.

And then, to define particularly an inquest, I call the attention of the court to the same volume, under the title "Inquest:"

The term *inquest* is used to signify the persons to whom the trial of any question, civil or criminal, is committed.

I also call the attention of the court to 1 Bouvier's Law Dictionary, page 715:

INQUEST. * * * The judicial inquiry itself, by a jury summoned for the purpose, is called an inquest. The finding of such men, upon an investigation, is also called an inquest, or an inquisition.

The next question presented by their replication is, Did the impeachment relate back to the inception of the proceedings by an authorized committee of the House? Whether the committee was authorized or not is a question of fact. Therefore the comments of the learned counsel relating thereto were not in order, because it is affirmed on the part of the House of Representatives that this committee had authority. If it should appear that the committee had no authority, then another principle would be invoked, and that is the principle of *adoption*. But it is not necessary to discuss that now, because, for the purposes of this argument, the authority is conceded. In regard to the principle of relation it is this: that the House of Representatives before this resignation having instituted proceedings against Mr. Belknap for the purpose of investigating these crimes and for the purpose of impeaching the defendant, when the impeachment was made it related back to the original proceeding which was instituted, as is confessed, before this resignation. When divers acts concur to a result, the original act is to be preferred, and to this the other acts have relation. In Lord Porchester *vs.* Petrie, 3 Douglas, 273, it is said as follows:

In Miller *vs.* Bradley the defendant moved to have the execution set aside, because the judgment on which it was taken out was not really a judgment till the morrow of the *Holy Trinity*, and so was not sufficient to warrant the issuing of the execution; but the court said that it was a judgment of the first day of the term in which it was obtained, by relation.

In Wright *vs.* Mills, 4 Hurlstone and Norman, 493, 494, the court say:

It is clear that this judgment would have been good at common law, for it would have related back to the first day of the term.

In Viner's Abridgment, volume 1, title "Relation," pages 289–293, the following authorities are found, and as two of these authorities relate to the criminal law, I have thought they might throw light upon this case.

I read at page 289:

Where the teste of the writ of appeal of death is within the year, and the return and the demise of the king is after the year, there by re-attachment the year shall be saved by relation to the original.

Many of this court remember that this writ of appeal of death was issued at the instance of a private suitor for the purpose of trying the question whether some relative of his had been murdered by the person against whom the writ was issued; and ordinarily such person had the right of "wager of battle." The writ must be returnable within one year, and yet in the case cited here, although the year had elapsed, by issuing a re-attachment it was said that the original proceedings were saved by relation.

Again, at page 290:

Where there are divers acts concurrent to make a conveyance, estate, or other thing, the original act shall be preferred, and to this the other act shall have relation.

At page 293:

A constable took a man who struck another, and after suffered him to go; and after, the party struck died of the blow. This escape is not felony, and yet it shall have relation to the striking in respect of him who struck; *ex prima causa oritur omnis actio;* but shall not have such relation in respect of the constable who suffered the escape.

As the law then stood, the person being out of custody, it was necessary to connect him with the original transaction by relation. The constable was not connected, because he was innocent of the original wrong. I refer also to Ashford *vs.* Thornton, Barnewall & Alderson, 405, 923; Jackson *vs.* McCall, 3 Cowen, 89; Jackson *vs.* Bull, 1 Johnson, 90. I will read a part of the note to this last case, 1 Johnson, 90:

Relation is a fiction of law, resorted to for the promotion of justice and the lawful intentions of parties, by giving effect to instruments, which without it would be invalid.

* * * Where there are divers acts concurrent to make a conveyance, estate, or other thing, the original act shall be preferred, and to this the other act shall have relation.

This last case, it is true, refers particularly to a conveyance, but it does not alter the principle, for the court will see that through every form of civil and also criminal proceedings from that based upon the appeal of death to the case of the assault and subsequent death, it has been held that where there are several acts concurring to an end all the subsequent acts relate back to the original act. This rule is never changed or varied excepting to prevent injustice. In this case we claim that the House of Representatives, having obtained jurisdiction of the subject-matter by instituting these proceedings against the defendant, he could no more defeat them by resigning midway than he could defeat the Constitution itself. When the House of Representatives by its solemn act impeached him of high crimes and misdemeanors, that was a judicial act, the highest judicial act that can be performed in this nation save one, and that is the act to be performed by this tribunal when it pronounces "guilty" or "not guilty" upon the proofs before it.

Therefore, we say the defendant in this case should not be allowed his dilatory plea, because these proceedings had been instituted against him long before he had resigned his office, long before he had attempted to escape the penalty due to his crime by this resignation. This impeachment is in furtherance of justice, not in furtherance of injustice. It is due to the defendant; it is due to the dead whom he claims to represent; it is due to all the associations that surround him if he is an innocent man that he establish his innocence in this tribunal. Therefore to hold jurisdiction in this case, to give him the opportunity to establish his innocence, or the House of Representatives to establish his guilt, is in furtherance of justice. To deny jurisdiction under these circumstances would be in furtherance of injustice.

In this case before the court the doctrine of relation prevents injustice, for it changes no rule of evidence, and does not affect the merits.

It only remains for me to call the attention of the Senate to one question, and that is, Can the defendant evade impeachment by resignation? That this was his object is confessed. That has already appeared by the sixth subdivision which has been read, and it presents the questions: Can he thus defeat the object of the Constitution? Can he thus take advantage of his own wrong?

But the learned counsel on the other side, who addressed the court on this point, assume that this is a very simple thing; that because a man has the right to change his residence by crossing a State line, or a right under certain circumstances to convey his property, therefore he has the right, when confronted with his crime, when the Constitution pronounces against him the decree of disqualification, when good morals, when the judgment of mankind, when justice to the country demand that that judgment of disqualification shall be pronounced, to defeat the Constitution and prevent the just retribution due to his crimes. I apprehend if the learned counsel cannot see the difference in their zeal for their client, that the common sense of mankind will see it. I think that the well-known common sense of these counsel, when they disrobe themselves of their duty to their client, will enable them to see the wide and marked distinction between the crossing of a State line and this act by which their client seeks to evade the judgment of the law.

But we have some authorities on this point to which I wish to call the particular attention of this tribunal. The learned counsel on the other side has aided me. He has introduced the authorities. I propose to show on this point, by the judgment of men who helped make the Constitution, by men who lived in the day when it was perhaps more thoroughly understood as to its intents than now, that we are right in this position and that the defendant cannot evade the judgment of the law by his voluntary resignation. The counsel in the Blount case conceded that a person could not evade the judgment of the law by a voluntary resignation and stood up before this tribunal and said: "We will never be found alleging that a man can escape the penalty due his crime, or evade the Constitution by a voluntary resignation."

Allow me briefly to call the attention of the court to the circumstances of the Blount case before I read from the arguments of the counsel. Mr. Blount was impeached by the House of Representatives on the 7th of July, 1797. He was expelled the next day by the Senate. Articles of impeachment were presented the next year, some seven months thereafter, namely, on the 7th of February, 1798. Mr. Bayard, one of the managers, page 2252, says:

It is also alleged in the plea that the party impeached is not now a Senator. It is enough that he was a Senator at the time the articles were preferred.

Allow me to say here in passing that it will be seen from the position which this gentleman took that it made no difference about Blount having been a Senator when the articles were preferred. Mr. Bayard says further:

If the impeachment were regular and maintainable, when preferred, I apprehend no subsequent event, grounded on the willful act, or caused by the delinquency of the party, can vitiate or obstruct the proceeding. Otherwise the party, by resignation or the commission of some offense which merited and occasioned his expulsion, might secure his impunity. This is against one of the sagest maxims of the law, which does not allow a man to derive a benefit from his own wrong.

More significant still, I read from the remarks of Mr. Dallas, page 2278. Mr. Dallas was one of the counsel for Senator Blount—

The articles of impeachment—

He says—

do not charge William Blount with any crime or misdemeanor committed in the execution of his office with any act which might not have been committed by any other citizen as well as a Senator; that there was room for argument whether an officer could be impeached after he was out of office; not by a voluntary resignation to evade prosecution, but by an adversary expulsion.

What does this learned counsel, Mr. Dallas, say? He says there is room for argument as to whether a man can be impeached after he has been *expelled* from office, but he affirms that there is no room for argument against his liability for impeachment after a voluntary resignation to evade prosecution.

Mr. Jared Ingersoll was one of the persons who signed the Constitution, a Representative from the State of Pennsylvania, a person who helped make that Constitution, a lawyer of transcendent abilities, a person who measured his words well, as you may see by reference to his argument. What does he say upon this point on page 2294? He says:

It is among the less objections of the cause that the defendant is now out of office not by resignation.

I call the attention of Senators particularly to these words:

I certainly shall never contend that an officer may first commit an offense, and afterward avoid punishment by resigning his office.

Then he adds—

But the defendant has been expelled.

Mr. Ingersoll then makes this argument:

Can he be removed at one trial and disqualified at another for the same offense? Is it not the form, rather than the substance of a trial? Do the Senate come, as Lord Mansfield says a jury ought, like blank paper, without a previous impression upon their minds? Would not error in the first sentence naturally be productive of error in the second instance? Is there not reason to apprehend the strong bias of a former decision would be apt to prevent the influence of any new lights brought forward upon a second trial?

This last argument of Mr. Ingersoll had such weight upon the minds of some of the annotators that they affirmed that jurisdiction was denied on the ground of Mr. Blount's expulsion. That I do not understand to be the ground. I understand that jurisdiction was declined because a Senator is not a civil officer within the meaning of the Constitution. Mr. Ingersoll argues that even if he were a civil officer within the meaning of the Constitution he had been summarily tried by the Senate and expelled, and the Senate having pronounced one judgment upon him could not pronounce a further judgment of disqualification at a different time.

If the court please, further authorities showing that no superstructure can be built on the ground of evasion or fraud and that a person intending to defeat the law cannot do it by his own evasive act need not be quoted in this tribunal.

I have said all that I deem necessary in opening this case. I have endeavored to bring before this tribunal fairly and truthfully our legal positions, and I think, and so the managers think, and so does the House think that the defendant is impeachable notwithstanding he has resigned his office.

We affirm that there is nowhere in the Constitution any inhibition against his impeachment. On the other hand, the whole intent and scope of the Constitution point toward his impeachment. The Constitution nowhere says that he must be impeached while in office. Senators will recollect that in one of the authorities introduced by the counsel, [Mr. Blair,] Story on the Constitution, the very words are used, "while in office." The Constitution does not say that he must be impeached "while in office," but it describes him as an officer and allows his impeachment down to the day of his death for any act committed by him while in office. Of course, the good sense of the House of Representatives would prevent an impeachment after a long lapse of years, unless for an imminent reason. This question, Senators, must be left to the discretion of the House of Representatives.

In conclusion, we affirm this court has jurisdiction because the defendant has been Secretary of War. We also affirm under our special replication in aid of the jurisdiction, first, that this court has jurisdiction, because the law will not divide the day into fractions to defeat the judicial act of impeachment; second, that under the doctrine of relation the impeachment of the defendant can be sustained; third, that he is subject to impeachment because he resigned with the intent to evade the disqualification of the Constitution. The House of Representatives of the United States, having impeached the defendant of high crimes and misdemeanors, through their managers demand that he be tried by this court, and, if found guilty, that he be disqualified from holding any office of honor, trust, or profit under the United States.

Mr. CARPENTER, [after a pause.] Mr. President, I supposed another manager would speak on that side. It certainly should be so arranged. It can hardly be supposed that the other three managers are exactly going to repeat what has been said by their chairman. If there are new points to be made in the case, we certainly should hear some more of them before we are asked to speak further. We ought to hear at least two managers now, and not pile the whole three upon the counsel who closes this case.

Mr. Manager LORD. Mr. President and Senators, I supposed the understanding was perfect between the counsel and myself that he was to reply and then that three other managers, under the order of the court, would go on. The Senate will see at once that we ought to hear more from the other side. It would be unjust to compel two managers to go on now, having heard only one upon the other side.

Mr. CARPENTER. We have no understanding made with us that we understand upon that subject. There was some conversation upon it.

Mr. Manager LORD. That was the last suggestion which we made.

Mr. CARPENTER. Some conversation passed upon it. At all events, the fair way to do is for two managers to speak now and then the other two before the case is closed by the counsel for the defendant.

Mr. INGALLS. I move that the Senate sitting as a court of impeachment take a recess until half past seven o'clock this evening.

Mr. CARPENTER. I desire to say that unless an arrangement is made, if another manager does not come next, it will fall upon me to proceed on the part of the defendant. I certainly cannot proceed to-night for I am not in a state of health to do so. I had not expected to be called on to-day. I have some briefs that are being printed, which I expect to be able to use to-morrow or the next day; but it would be impossible for me to go on to-night with any justice to the case, or to myself, or to anybody else.

The PRESIDENT *pro tempore*. The question is on the motion proposed by the Senator from Kansas that the Senate sitting for this trial take a recess until half past seven o'clock.

Mr. ANTHONY. I hope we shall not take a recess. I do not care how long we sit, but I think we had better not go down street and come back again this evening.

Mr. COOPER. I move that the Senate sitting as a court of impeachment do now adjourn.

Mr. THURMAN. Until half past twelve o'clock to-morrow?

Mr. CONKLING. The rule fixes the hour at half after twelve.

Mr. EDMUNDS. We had better fix it at twelve.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from Tennessee that the Senate sitting in trial do now adjourn.

The motion was agreed to; and the Senate sitting for the trial of the impeachment of W. W. Belknap adjourned until to-morrow at half past twelve o'clock.

FRIDAY, May 5, 1876.

The PRESIDENT *pro tempore* having announced that the time had arrived fer the consideration of the articles of impeachment against William W. Belknap,

The usual proclamation was made by the Sergeant-at-Arms.

The respondent appeared with his counsel, Mr. Blair, Mr. Black, and Mr. Carpenter.

The managers on the part of the House of Representatives appeared in the seats provided for them.

The PRESIDENT *pro tempore*. The Secretary will give the usual notice to the House of Representatives.

The Secretary read the journal of the proceedings of the Senate sitting yesterday for the trial of the impeachment of William W. Belknap.

The PRESIDENT *pro tempore*. The Senate is now ready to proceed with the trial. The counsel will now be heard. Senators will give attention.

Mr. CARPENTER. Mr. President and Senators, under the order made by the court I had hoped and expected that at least two of the managers would be heard before I should have to address the Senate; but this seems not to be convenient for them. The only real difficulty I feel in presenting this case to the Senate is that it requires a more vivid imagination than I possess to conceive what is to be said or can be said by the other side.

Briefly, the attitude of the case is this:

The articles of impeachment charge that the respondent, Belknap, was at one time Secretary of War, and, while holding that office, did certain things which are declared by said articles to be high crimes and misdemeanors.

The respondent pleads to the jurisdiction of the court that, when this proceeding was commenced, he was not an officer of the United States, but was a private citizen.

The first replication avers that he was Secretary of War when he committed the acts complained of, and the respondent has demurred.

A second replication by the House charges that after the acts were committed the House had commenced an investigation, with a view to impeachment, and that the respondent, with full knowledge of the fact, resigned his office, with intent to evade impeachment. This replication has closed in issues of fact, which are pending for trial.

The court has ordered an argument in regard to the sufficiency of the plea in abatement, the materiality of the issues of fact, and also whether the House can support the jurisdiction by matters alleged in subsequent pleadings, but not alleged in the articles of impeachment.

I shall endeavor to maintain the following propositions:

1. That articles of impeachment cannot be entertained against a private citizen in any case whatever.

2. That wherever articles of impeachment are exhibited, they must set forth every fact essential to constitute a high crime or misdemeanor, and every fact necessary to bring the case within the jurisdiction of the court; and

3. That the issues of fact arising upon the plea in abatement are immaterial.

I. Can proceedings by impeachment be maintained against a private citizen?

There are two theories of the Constitution in regard to impeachment.

1. That the provisions which give the House the power to impeach, and the Senate the sole power to try impeachments, confer a power as broad as that before then exercised by the British Parliament in regard to the persons who may be impeached and the crimes for which impeachment may be had. And that the provision, "Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office," &c., is a mere *limitation* upon the power to punish; and that the provision, "The President, Vice-President, and all civil officers of the United States, shall be removed from office by impeachment, for," &c., merely declares what the punishment shall be, when the person impeached happens to be such officer.

2. The other theory is, that impeachment, as authorized and regulated by the Constitution, *is only a proceeding to remove an unworthy public officer.*

One or the other of these theories must be accepted; there is no middle ground. And the importance of judging correctly which is the proper construction cannot be exaggerated.

If the former theory be adopted, it will follow that every inhabitant of the United States, citizen or alien, male or female, may be impeached for any conduct or transaction which, in the opinion of the Senate for the time being, may be characterized as a high crime or misdemeanor.

The Constitution provides—

1. The House of Representatives shall have the sole power of impeachment. (Article 1, section 2.)

2. The Senate shall have the sole power to try all impeachments, and the judgment in such cases shall extend no further than to removal from office and *disqualification to hold office.*

3. But the party *convicted* shall be liable to indictment, &c. (Article 1, section 3.)

4. The President shall have no power to pardon in cases of impeachment. (Article 2, section 2.)

These provisions regulate the accusation, trial, and judgment in cases of impeachment, but do not determine who shall be subject to impeachment, beyond the strong inference arising from article 1, section 3, clause 7, which provides that the judgment shall not extend beyond *removal from office* AND *disqualification to hold office.*

But this is settled by article 3, section 4, as follows:

The President, Vice-President, and all civil officers of the United States shall be *removed from office* on impeachment for and conviction of treason, &c.

There are a few fundamental principles never to be lost sight of in any constitutional discussion. Sovereignty with us resides in the people. They have delegated to the State governments the attributes of sovereignty so far as deemed consistent with free institutions. The Constitution of the United States establishes a government with supreme powers over certain subjects. In other words, the sovereign powers possessed by the people are distributed between the Federal and State governments; and it is well settled by the courts, and conceded by all sound statesmen and good lawyers, that the State governments possess all the powers consistent with free institutions, except those which are denied to them by their own or the Federal Constitution. That, whenever a power is denied to a State, the objection can be supported only by pointing out a constitutional prohibition. But, on the other hand, the Federal Government possesses no power not conferred by the Federal Constitution, either by express words or necessary implication. And by necessary implication only such powers are granted as are essential to the execution of the powers which are expressly granted. And, manifestly, a claim of jurisdiction in this court, which, if conceded, would subject forty millions of people to its power in all matters of high crime or misdemeanor, must find support in clear grant in the Constitution, and is not to be assumed upon forced construction or doubtful implication.

Bearing these principles in mind, if I can establish that no warrant is found in the Constitution for impeachment of a private citizen in any case whatever, this proceeding must fall. To say that a private citizen may be impeached, but only for crimes committed in some office formerly held by him, would be to establish a distinction as arbitrary and capricious as to say he can only be impeached for crimes committed by him while he was between thirty and forty years of age. The question is whether a private citizen can be impeached at all. If so, he may be impeached for whatever the Senate for the time being may consider a high crime or misdemeanor, without regard to the time, place, or circumstance of committing the offense.

I shall endeavor to show, from the text of the Constitution, from the debates of the convention which framed it, contemporaneous writings of public men, commentaries of recognized authority, and the decisions of this court, that the only office which impeachment can perform is *removal from office* or removal *and* disqualification, in the discretion of the court. If I shall succeed in this endeavor, it will follow that impeachment can only be brought against one who is an officer of the United States at the time of impeachment.

I shall first refer to the debates and proceedings of the Constitutional Convention, which will be seen to shed a flood of light upon this question.

After several plans had been submitted and discussed in Committee of the Whole, the committee, on the 13th day of June, 1787, reported to the convention a general scheme of the Constitution, in the form of resolutions, nineteen in all. Two of these resolutions touch the subject of impeachment.

The ninth resolution relates to the Executive;—how he should be elected, what his powers should be, to be ineligible a second time, "*and to be removable on impeachment and conviction of malpractice or neglect of duty.*"

The thirteenth resolution was in regard to the judiciary, and proposed "that the jurisdiction of the national judiciary shall extend to all cases which respect the collection of the national revenue, *impeachments of any national officers*, and questions which involve the national peace and harmony." (2 Curtis's Constitution, pages 86, 87.)

Here, manifestly, impeachment is regarded as a proceeding for the removal of a public officer. The ninth resolution declares that the President shall be removable on impeachment; and the thirteenth, which relates to the exercise of the power to try impeachments, is confined to "impeachments of any national officers."

Again, the ninth resolution proposes the removal of the President "on impeachment and conviction of malpractice or neglect of duty." That is, that the President should only be impeached while in office, because the object of impeachment was to remove him. In the thirteenth resolution the power is to try "impeachments of any national officers;" not impeachment for misconduct in office, but impeachments of national officers.

These resolutions exclude the idea that impeachment was intended to reach any one not in office, because it is manifest that the power to impeach could not extend beyond the power to try impeachments; and this was confined to impeachment of *officers.*

On the 20th of July, the ninth resolution was considered by the convention; and the subject of impeachment was discussed quite at length. Mr. Pinckney and Mr. Morris moved to strike out the clause subjecting the President to removal by impeachment.

Mr. Pinckney observed he ought not to be impeached while in office.

Mr. DAVIE. If he be not impeachable while in office, he will spare no efforts or means whatever to get himself re-elected. He considered this as an essential security for the good behavior of the Executive.

Mr. Wilson concurred in the necessity of making the Executive impeachable while in office.

Mr. MORRIS. He can do no criminal act without coadjutors, who may be punished. * * * Is the impeachment to suspend his functions? If it is not, the mischief will go on. If it is, the impeachment will be nearly equivalent to a displacement, and will render the Executive dependent on those who are to impeach.

Dr. Franklin was for retaining the clause as favorable to the Executive, upon the ground that, if not removable by impeachment, recourse would be had to assassination, by which he would not only be deprived of his life, but of all opportunity to vindicate his character.

Mr. Madison thought impeachment necessary to defend the community against the incapacity, negligence, or perfidy of the Chief Magistrate.

Mr. Gerry urged the necessity of impeachments. A good magistrate will not fear them; a bad one ought to be kept in fear of them.

Mr. King maintained that only those officers who held during good behavior ought to be impeached.

Mr. Randolph was in favor of impeachments as a check upon the Executive; especially in time of war, when the military force, and in some respects the public money, will be in his hands. Should no regular punishment be provided, it will be irregularly inflicted by tumults and insurrections.

Dr. Franklin cited the bad conduct of the Dutch Stadtholder and the evil which resulted from his not being impeachable.

Mr. King remarked that the case of the Stadtholder was not applicable. He held his place for life, and was not periodically elected. In the former case impeachments are proper to secure good behavior. In the latter they are necessary.

Mr. Morris, at the conclusion of the debate, said that his views had been changed by the discussion. The Executive ought to be impeachable. He should be punished *not as a man*, but as *an officer*, and punished *only by degradation from his office.*

And on the question, "Shall the Executive be removable on impeachment," the vote by States was—yeas 8, nays 2.

This was the principal debate in the convention upon this subject, and shows conclusively that no member of the convention entertained the idea that impeachments should be employed against any but public officers.

On the 6th of August the committee of detail reported their first draught of the Constitution. It provided, (article 4, section 6:)

The House of Representatives shall have the sole power of impeachment.

Article 10, section 2, provided:

He [the President] shall be removed from his office on impeachment by the House of Representatives, and conviction, in the Supreme Court, of treason, bribery, or corruption.

Article 11, section 3, extended the jurisdiction of the Supreme Court to "the trial of impeachments of officers of the United States." And section 5, article 11, contained the provision as to punishment, as it now stands in the Constitution.

This draught of the Constitution clearly confines impeachment to "officers of the United States;" because the power to *try* impeachments is so confined.

August 31, such parts of the Constitution as had been postponed, and such parts of reports as had not been acted on, were referred to a committee of eleven. This committee, on the 4th day of September, made a partial report, in which they recommended that the latter part of section 2, article 10, should read as follows:

He [the President] shall be removed from his office on impeachment by the House of Representatives, and conviction by *the Senate*, for *treason* or *bribery.*

The committee explained the reason for giving the power to try impeachments to the Senate, instead of the Supreme Court, to be that the judges would be appointed by the President, and therefore ought not to try him on impeachment.

On the 8th of September the report was considered, and the provision as to impeachment of the President was amended, on motion of Colonel Mason, by adding after the word "bribery" the words "other high crimes and misdemeanors against the state." And for the word "state" the words "United States" were substituted, to avoid ambiguity.

Colonel Mason's first motion was, to insert after the word "bribery" the words "or maladministration."

Mr. Madison objected to this term which, he said, was so vague that the President's tenure would be during the pleasure of the Senate.

Mr. Morris. It will not be put in force, and can do no harm. An election of every four years will prevent maladministration.

Colonel Mason then withdrew "maladministration," and substituted "other high crimes and misdemeanors."

It is evident from this that the term "high crimes and misdemeanors" was used in the sense of *official misconduct* amounting to crime or misdemeanor. The phrase was substituted for "maladministration" only because that word was too vague and general.

After this, on motion, and without debate, the following, "The Vice-President, and other civil officers of the United States, shall be removed from office on impeachment and conviction as aforesaid," was added to the clause on the subject of impeachments.

This left the provision of the Constitution as follows:

He [the President] shall be removed from his office on impeachment by the House of Representatives and conviction by the Senate, for treason, bribery, and other high crimes and misdemeanors against the United States. The Vice-President, and other civil officers of the United States, shall be removed from office on impeachment and conviction as aforesaid.

In this condition the matter went to the committee on style and arrangement. This committee made its report on the 12th day of September, and their draught contained the provisions as finally adopted, except that the words "or affirmation" were subsequently added to the requirement that Senators should be "on oath" in the trial.

It is thus seen that not a word was uttered by any member of the convention, and nothing appears in its proceedings, giving the slightest support to the theory that impeachment extends to any but those who are holding office at the time of impeachment. It is manifest that impeachment was intended as a method of removal from office, and that the cause for removal from office should be official misconduct.

These proceedings of the convention show conclusively that the framers of the Constitution intended to provide only for the impeachment of those holding office, for misconduct in such office. And, if the Constitution reaches private citizens, it is certain that it was not intended to do so, and its framers failed to employ language to secure the end they had in view. Such charge has never yet been made, and cannot be maintained, against those illustrious statesmen.

The only proper rule of construction, whether applied to a constitution, a statute, or a contract, is to ascertain the intention of those who made it; and, when such intention is ascertained, it must be carried into effect.

Upon no other principle can the jurisdiction of this court be maintained in any case whatever. If we are to consider the mere language, apart from the intention of those who framed the Constitution and the amendments, it is demonstrable that impeachment will not lie even against a public officer for any act which falls within treason, bribery, or other high crime or misdemeanor, created or defined by any statute, or known to the common law. This is a startling proposition, but clearly tenable upon construction of the language of the Constitution and amendments, apart from the known intention of those who framed and adopted them.

It is well known that the Constitution was not acceptable to many of the States which ratified it; and that it was ratified with the expectation that it would be immediately amended. And several of the States, at the time of ratification, suggested amendments intended to limit, and more carefully define, the powers of the General Government. In accordance with this expectation the first Congress under the Constitution proposed several amendments, which were ratified by the States, materially changing the Constitution. But these amendments have generally been regarded as though they had been contained in the original instrument. Everybody understands that the thirteenth, fourteenth, and fifteenth amendments have wrought material changes. They were intended so to do, and are construed accordingly. And yet it is manifest that the first eleven amendments fall within the same canons of judicial construction; and that each must be considered as repealing any provision of the original instrument with which, when properly construed, it conflicts.

Let us turn now to the fifth and sixth amendments, and consider their language, without regard to the intention with which, and the objects for which, they were adopted.

The original Constitution provides in words, that officers of the United States may be impeached by the House and tried by the Senate, for treason, bribery, or any other high crime or misdemeanor; and that, too, without regard to whether such offense was committed in an office by misuse of its functions, or while holding an office, the offense not being connected with the office; or committed at any time even previous to holding an office. And that the officer, after being tried by the Senate, and punished to the extent of removal, or removal and disqualification, may be indicted, tried, and punished by the ordinary courts of law for the same offense. That is, he may be twice tried and twice punished for the same offense.

The fifth and sixth amendments of the Constitution are as follows:

Article V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

"No person"—persons include every inhabitant of the United States, citizen or alien, male or female, in office or not—"shall be held to answer for a capital or otherwise infamous crime, unless upon presentment or indictment of a grand jury, except in cases arising in the land or naval forces, &c.; nor shall any person be subject for the same offense to be twice put in jeopardy, &c. * * * In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury," &c.

The respondent in this case is held to answer for an infamous crime, without presentment or indictment of a grand jury; and his case did not arise in the land or naval forces, within the meaning of the Constitution, even conceding him to have been in office at the time of the impeachment. The Secretary of War is a civil, not a military, officer. An impeachment is a criminal prosecution, and this trial is a trial for crime. This is established by article 3, section 2, as follows:

The trial of all crimes, *except in cases of impeachment*, shall be by jury.

It cannot be denied that the fifth and sixth amendments, construed according to the plain import of the language employed, is in conflict with and repeals the provisions of the original Constitution in relation to impeachment. The crime of bribery, which these articles are intended to charge, is made an indictable offense by the statutes of the United States. And, if this court shall hold that only the language shall be considered in construing the original Constitution, the same rule must be applied to these amendments, and the power of impeachment is abolished. There would be no escape from this result, under these amendments; but that we know as matter of history they were not so intended.

If I could show that it was objected to the ratification of the Constitution that the power of impeachment ought not to exist; that an officer of the United States ought not to be liable to be twice put in jeopardy before different tribunals; if I could read the debates in Congress when these amendments were proposed, showing that it was intended to abolish impeachment, no one would deny that the language of the amendments was adequate to the purpose. And the only possible answer to the proposition that impeachment is abolished by the amendments, is that they were not designed to produce that effect.

Reading the Constitution in the light of the circumstances which surrounded its adoption, and the known purpose of its framers; and reading the amendments in view of the objections to the original instrument, and the purpose of those who framed the amendments, the amendment may be so construed as not to impair the power of impeachment. This method of construction was adopted by the Supreme Court of the United States in the Slaughter-house cases, 16 Wallace, page 36. The court, speaking of the true import of the amendments of the Constitution, say:

The most cursory glance at these articles discloses a unity of purpose, when taken in connection with the history of the times, which cannot fail to have an important bearing on any question of doubt concerning their true meaning. Nor can such doubts, when any reasonably exist, be safely and rationally solved without a reference to that history; for in it is found the occasion and the necessity for recurring again to the great source of power in this country, the people of the States, for additional guarantees of human rights; additional powers to the Federal Government; additional restraints upon those of the States. Fortunately that history is fresh within the memory of us all, and its leading features, as they bear upon the matter before us, free from doubt.

And in the light of this history, and to secure the purpose for which it was adopted, the court proceeded to construe the fourteenth amendment, limiting its operations to much less than its language imports.

I am content in this case with this rule of construction; content that the intention with which the power of impeachment was incorporated in the Constitution, that is, to remove unworthy officers of the United States, should be applied to that instrument; content that the same rule should be applied to the fifth and sixth amendments. But, if this rule be rejected as to the Constitution itself, it cannot be applied to the amendments; and the power of impeachment is gone altogether.

Speaking of the text of the Constitution, I may refer to the method adopted in its frame-work, of first conferring a power, and then proceeding to define it. For instance, article 1, section 1, provides, "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." The Constitution then proceeds carefully to enumerate the powers and privileges of the respective Houses, and the legislative powers they shall exercise.

Article 2, section 1, declares, "The executive power shall be vested in a President of the United States of America;" and then follows an enumeration of the powers which shall be exercised by the President.

Article 3, section 1, provides, "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior

courts as the Congress may from time ordain and establish;" then follows a declaration of the nature and extent of the power to be exercised by the courts.

Bearing in mind this method, when we read that the "House of Representatives shall have the sole power of impeachment; and the Senate, the sole power to try impeachments;" and learn from the debates in the convention, that impeachment was intended as a method of removal from office, we naturally look elsewhere in the Constitution for the extent of this power; in other words, for the officers who may be removed by this method, which we find in section 4 of article 2, as follows:

The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment, &c.

There is a strong implication arising from the provision that punishment in cases of impeachment shall extend no further than removal from office, or removal *and* disqualification, that impeachment only lies against those in office. But section 4 of article 2 is perfectly conclusive.

Consider the language of this fourth section of the second article. The President shall be removed, &c. Suppose General Jackson still alive, and to be impeached to-day for removing the deposits from the Bank of the United States. Who would preside over the trial?

Section 3 of article 1 provides,

When the President of the United States is tried, the Chief Justice shall preside.

Suppose General Jackson living, and impeached for removing the deposits. Would the Chief Justice preside? Manifestly not, because General Grant is President, and the case supposed would be an impeachment of a private citizen, and not of the President. And yet, upon the theory now maintained, that once a President is always a President for the purposes of impeachment, the Chief Justice would have to preside. This is as absurd as it would be to construe a statute giving members of Congress the franking privilege, as giving that privilege to every one who had been a member of Congress.

The Constitution does not authorize the impeachment of certain crimes, that is, crimes committed in offices, but it authorizes an impeachment of certain persons, described by the class to which they belong; that is, civil officers of the United States.

I may assume, therefore, that the purpose for which the power of impeachment was incorporated in the Constitution will be observed by this court, in exercising the jurisdiction which the Constitution confers. And upon this subject the debates in the convention are not only satisfactory, but absolutely conclusive.

Before passing from the subject of these debates, let me say that considerable opposition was developed against embodying this power in the Constitution. Those who opposed it did so upon the ground that conferring the power would make the President a subservient tool of Congress, and destroy the proper equilibrium of the three departments. On the other hand it was urged that without the impeachment clause it would be in the power of the President, especially in time of war, when he would have large military and naval forces at command, and public moneys at his disposal, to overthrow the liberties of the people. Near the close of the debate, Mr. Morris said his views had been changed by the discussion, and he expressed his opinion to the effect that—

The Executive ought to be impeached. He should be punished, *not as a man*, but *as an officer*; and punished *only by degradation from his office*.

This was the only debate upon the general subject of impeachment. Thus it will be seen that those who favored, and those who opposed, incorporating the power in the Constitution, contemplated the impeachment of officers while holding office.

There was a subsequent debate, in regard to the tribunal to be charged with the trial of impeachments; and the Senate was selected, instead of the Supreme Court, for the reason that a few judges, separated from the people by the nature of their office, would not be able to handle those great offenders, in possession of the overwhelming powers of the Government, whose enormous crimes might make the blood of ordinary criminal courts run cold; and whose power might set at naught the authority of such courts. The Senate was selected because its members would be more numerous, its connections with the people more intimate, and hence its power would be more efficient to deal with the President or other high officer of the Government controlling the physical force and financial resources of the Government. The President or the Secretary of War, with half a company of regulars, might disperse the grand jury of a court; but could not interfere with the functions of the Senate, without arousing the indignation of the people.

So that this, like the former debate, shows that nothing was contemplated but the impeachment of persons holding office at the time of impeachment. Indeed the remarks of every member of the convention, who participated in either of the debates, as well those in favor of, as those opposed to, the power of impeachment, shows that impeachment of officers only was contemplated; and not a word was uttered by any member of the convention giving the slightest countenance to the idea that a private citizen was subject to impeachment.

And before passing from this subject, let me repeat that the phrase "high crime or misdemeanor," so terrible because so indefinite, was inserted in the Constitution in place of the still more ambiguous phrase "maladministration;" and because the power of removal by impeachment for maladministration would enable the Senate to remove a President on a mere difference of opinion as to the propriety of the exercise of a power clearly confided to the President. And the object of this amendment was to declare that the maladministration, to be cause of removal, should amount to a crime or misdemeanor as defined by the common law or some statute of the United States.

Mr. CONKLING. What was said about the provision that the Chief Justice shall preside on the trial of the President?

Mr. CARPENTER. The time allowed me by the Senate to prepare for this argument does not enable me to say that the subject was not mentioned in the convention; but I may say that I have not been able to find that it was, and I think this provision was inserted by the committee on style and arrangement. This committee observed the votes of the convention, but, in matters not settled by votes, exercised their discretion with considerable freedom.

Let me repeat another remark. It is manifest from the discussions in the convention, that impeachment was regarded as a check or curb upon the exercise of power in the possession of those subject to impeachment; and not as retribution or punishment against those who had ceased to hold office, for former misconduct in office.

This conclusion is supported by text writers, and the only adjudication on the subject in this court.

Story, Commentaries on the Constitution, section 803, says:

As it is declared in one clause of the Constitution "that judgment in cases of impeachment shall not extend further than a removal from office and disqualification to hold any office of honor, trust, or profit under the United States," and in another clause that "the President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors," *it would seem to follow* that the Senate, on the conviction, were bound in all cases to enter a judgment of *removal from office*, though it has a discretion as to inflicting the punishment of disqualification. If, then, there must be a judgment of removal from office, *it would seem to follow that the Constitution contemplated that the party was still in office at the time of impeachment.* If he was not, his offense was still liable to be tried and punished in the ordinary tribunals of justice. And it might be argued with some force that it would be a vain exercise of authority to try a delinquent for an impeachable offense when the most important object for which the remedy was given was no longer necessary or attainable. And although a judgment of disqualification might still be pronounced, the language of the Constitution may create some doubt whether it can be pronounced without being coupled with a removal from office. There is also *much force* in the remark that an impeachment is a proceeding purely of a political nature. It is not so much designed to punish an offender as to secure the state against *gross official misdemeanors.*

Curtis, in his History of the Constitution, says:

Although an impeachment may involve an inquiry whether a crime against any positive law has been committed, *yet it is not necessarily a trial for crime*, nor is there any necessity in the case of crimes committed by public officers for the institution of any special proceeding for the infliction of the punishment prescribed by the laws, since they, like all other persons, are amenable to the ordinary jurisdiction of the courts of justice, in respect of offenses against positive law. *The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office.* Such a cause may be found in the fact that either in the discharge of his office or aside from its functions he has violated a law or committed what is technically denominated a crime. But a cause for removal from office may exist where no offense against positive law has been committed, as where the individual has from *immorality, or imbecility, or maladministration become unfit to exercise the office.* The rules by which an impeachment is to be determined are therefore peculiar, and are not fully embraced by those principles or provisions of law which courts of ordinary jurisdiction are required to administer.

No. 65 of the Federalist, written by Alexander Hamilton, says:

The subjects of impeachment are *those offenses which proceed from the misconduct of public men*, or, in other words *from the abuse or violation of some public trust.* They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.

The learned manager, Mr. LORD, yesterday referred to this quotation, and relied upon the phrase "public men" as proof that Mr. Hamilton supposed that impeachment would lie against prominent citizens, though not in office. He referred to my honorable colleague (Judge Black) as a public man, though no longer in office. I concede that my colleague is a public man, and very distinguished among public men. But it is evident that he is not included within the category of those supposed by Mr. Hamilton to be subject to impeachment.

Mr. Hamilton says:

The subjects of impeachment are those offenses which proceed from the misconduct of public men, or, in other words, "from the abuse or violation of some public trust."

Judge Black, though a public man in the popular sense, is not at present charged with the administration of any public trust.

In Blount's case, where the question I am discussing was first presented to this court, Messrs. Bayard and Harper, managers, understanding the task before them, grappled with the subject, and maintained the broad ground that the power of impeachment under our Constitution reached to every inhabitant of the United States. Blount, not as a Senator, but while a Senator, had committed the acts charged in the articles of impeachment. He pleaded to the jurisdiction, first, that he was not an officer of the United States when he committed the acts complained of, and, secondly, that he was not even a Senator at the time of the impeachment. It appeared from the record that he was a Senator at the time the acts were committed. The managers argued that a Senator was a civil officer. But they also contended that *whether a Senator was a civil officer or not, was immaterial;* because impeachment was not confined to civil officers. And there was no fault in their reasoning, upon their premises. If impeachment lies against any private citizen of the United States,

then Blount should have been convicted; because surely he could not interpose his senatorial character as a shield against an impeachment maintainable against any private citizen. And so the question was distinctly presented, whether or not impeachment lies against a private citizen.

The court, as is well known, decided that there was no jurisdiction. And this decision is an *authoritative* declaration that impeachment cannot be maintained against a private citizen.

I need not take the time to show why the Senate, sitting as a court of impeachment, should be bound by its former adjudications. In the proceeding of impeachment so much is necessarily left without definition or regulation, that the determinations of the court, after able argument and full consideration, should not be departed from, except for irresistible reasons.

In the case of President Johnson the managers concluded that the object of impeachment was removal from office. General Butler, in opening the case, submitted a brief prepared by Hon. WILLIAM LAWRENCE, member of Congress from Ohio, the burden of which is that the sole object of impeachment is the removal of an unfit public officer. This brief may be found in the first volume congressional edition of the trial, page 123. I will give some extracts from this brief bearing upon and supporting our present position.

On page 124 is the following:

In England impeachment may, to some extent, be regarded as a mode of trial designed, *inter alia*, to punish crime, though not entirely so, since a judgment on an impeachment is no answer to an indictment in the King's Bench. Here *impeachment is only designed to remove unfit persons from office, and the party convicted is subject to indictment, trial, and punishment in the proper courts.*

On page 126, after referring to the principles which governed impeachment in England, prior to the adoption of our Constitution, he says:

With these landmarks to guide them, our fathers adopted a constitution under which official malfeasance and nonfeasance, and, in some cases, misfeasance, may be the subject of impeachment, although not made criminal by act of Congress, or so recognized by the common law of England or of any State of the Union. They adopted impeachment *as a means of removing men from office* whose misconduct imperils the public safety and renders them unfit to occupy political position.

All this is supported by the elementary writers, both English and American, on parliamentary and common law; by the English and American usage in cases of impeachment; by the opinions of the framers of the Constitution; by contemporaneous construction, all uncontradicted by any author, authority, case, or jurist, for more than three-quarters of a century after the adoption of the Constitution.

On page 134 he says:

The Constitution contains *inherent evidence* that the *indictable* character of an act does not define its *impeachable* quality. It enumerates the classes of cases in which legislative power may be exercised, and it defines the class of persons and cases to which the judicial power extends; but there is no *such* enumeration of impeachable *cases, though there is of persons.*

In England and some of the States the power of removal of officers by the executive on the address or request of the Legislature exists, but the Constitution made no provision for this as to any officer, manifestly because the power of impeachment extended to *every proper case for removal.*

As to the President and Vice-President, there is this provision, that "Congress may by law provide for the case of *removal*, death, resignation, or *inability*, * * * declaring what officer shall then act * * * until the disability be removed or a President shall be elected." (Article 2, section 1.)

It has already been shown that the framers of the Constitution regarded the power of impeachment as a means of defending "the community against the *incapacity*" of officers. This clause of the Constitution recognized the same view, (article 2, section 1:) "Congress may by law provide for the case of * * * *inability*, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed or a President shall be elected."

This, and the power of impeachment are the *only modes of getting rid of officers whose inability from insanity or otherwise renders them unfit to hold office, and whose every official act will necessarily be misdemeanor.* As to the President and Vice-President, it was necessary to give Congress the power to designate a successor, and so to determine the disability. As to all other officers, the Constitution or laws define the mode of designating a successor, and *it is left to the impeaching power to remove* in cases of insanity or misdemeanor arising from that or other cause. It cannot be supposed the whole nation must suffer without remedy if the whole Supreme Court or other officers should become utterly disabled from the performance of their duties. Such an occurrence is within the range of possibility, if not probability.

On page 140 he says:

The first case tried, that of William Blount, a Senator of the United States from Tennessee, *simply decided that none but civil officers can be impeached*, and that a Senator is not such civil officer.

These are the grounds upon which the House of Representatives demanded the conviction of President Johnson. It would be a burlesque of justice to suppose that the House of Representatives could demand the conviction of Belknap by denying the principles upon which they demanded the conviction of Johnson.

But we are not left to the doctrine of this House upon the subject. We have the opinions of Senators upon this point.

Senator HOWE, volume 3, page 68, said:

I hold, with the elder authorities, with the late authorities, with all the authorities, that impeachment is a process provided, not for the punishment of crime, but for the protection of the state. And so holding, I must give judgment, not as to whether the acts proved upon the respondent are declared by the criminal code to be crimes, but whether I think them so prejudicial to the state as to warrant his removal.

Senator EDMUNDS, ibid., page 89, said:

Punishment by impeachment does not exist under our Constitution. The accused cannot thereby be deprived of life, liberty, or property. He can only be *removed from the office he fills*, and prevented from holding office, not as a punishment, but as a means merely of protection to the community against the danger to be apprehended from having a criminal in office.

Senator Garrett Davis, page 156, said:

First. No person but civil officers of the United States are subject to impeachment.

Senator Sumner, page 249, said:

It [impeachment] is not in the nature of *punishment*, but in the nature of *protection to the Republic.* It is confined to removal from office and disqualification; but, as if aware that this was no punishment, the Constitution further provides that this judgment shall be no impediment to indictment, trial, judgment, and punishment "according to law." Thus again is the distinction declared between an impeachment and a proceeding "according to law." The first, which is political, belongs to the Senate, which is a political body; the latter, which is judicial, belongs to the courts, which are judicial bodies. The Senate removes from office; the courts punish. I am not alone in drawing this distinction. It is well known to all who have studied the subject. Early in our history it was put forth by the distinguished Mr. Bayard, of Delaware, the father of Senators, in the case of Blount, and it is adopted by no less an authority than our highest commentator, Judge Story, who was as much disposed as anybody to amplify the judicial power. In speaking of this text he says that impeachment "is not so much designed to punish the offender as *to secure the state against gross official misdemeanors*; that it touches neither his person nor property, but simply divests him of his political capacity. (Story, Commentaries, volume I, § 803.) All this seems to have been forgotten by certain apologists on the present trial, who, assuming that impeachment was a proceeding "according to law," have treated the Senate to the technicalities of the law, to say nothing of the law's delay.

And again, at page 270, he said:

This is a trial of impeachment, and not a criminal case in a county court. It is a proceeding for expulsion from office on account of political offenses, not a suit at law.

On page 67, volume 2, Mr. Manager BOUTWELL says:

The object of this proceeding is not the punishment of the offender, but the safety of the state.

And on page 99:

They have brought this respondent to your bar, and here demand his conviction in the belief, as the result of much investigation, of much deliberation, that the interests of this country are no longer safe in his hands.

The learned manager evidently considered that removal from office, not punishment of the offender, was the only object of the constitutional provision for impeachment.

We have been unable to find a single case in which impeachment has been sustained where the accused was not in office at the time of impeachment.

In the case of Barnard, in New York, he was impeached for, among other things, offenses committed in a former term of the same office. But he was in the same office at the time of impeachment. In the first volume of the Trial of Barnard, page 151, we find the argument of Mr. Beach for the defendant, who cites the report of the judiciary committee of the house of New York in the case of Philip C. Fuller:

The house directed the judiciary committee to inquire and report,

First. Whether a person could be impeached who, at the time of his impeachment, was not the holder of an office under the laws of the State.

Second. Whether a person could be impeached and deprived of his office for malconduct, or offenses done or committed under a prior term of the same or any other office.

* * * * * * *

Mr. Weeks, from the judiciary committee, reported that—

The only clause in the Constitution relating to judgments upon impeachments provides that judgments in such cases shall not extend further than the removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State; but the party impeached shall be liable to indictment and punishment according to law.

From this and from the theory upon which our Government is based, the committe have come to the conclusion:

First. That no person can be impeached *who was not*, at the time of the commission of the alleged offense, and at the time of the impeachment, holding some office under the laws of this State

That the person impeached must have been in office at the time of the commission of the alleged offense, and at the time of the impeachment holding some office under the laws of this State.

That the person impeached must have been in office at the time of the commission of the alleged offense, is clear from the theory of our Government, namely: That all power is with the people who, if they saw fit, might elect a man to office guilty of every moral turpitude, and no court has the power to thwart this their will, and say he shall not hold the office to which they have elected him. A contrary doctrine would subvert the spirit of our institutions.

It is equally clear, from the tenor of the Constitution, that the person must be in office at the time of the impeachment. This instrument provides that two modes of punishment, namely: Removal from office, or removal or disqualification to hold office. In either mode of punishment the person must be in office, for *removal is contemplated in both cases*, which cannot be effected unless the person is in office.

The courts are the only tribunals that have jurisdiction over a delinquent, after his term of office has expired, to punish him for offenses committed in the discharge of the duties of his office.

The committee have further come to the conclusion:

Secondly. That no person can be impeached and deprived of his present term of office, for offenses alleged to have been committed during a prior term of the same, or any other office.

Neither by the Constitution nor by our laws is there any period limited in which an impeachment may be found. It is but fair, therefore, to infer that the *intention* was to confine the time to the term of office during which the offenses were alleged to have been committed; any other conclusion would lead to results which could not be sustained, for who can say but that the people knew of this malconduct, these offenses, and elected the individual notwithstanding; true, an extreme case might be put of fraud committed on the last day of the term of an office, to which office the individual might be immediately re-elected; yet who could say this was not known to the people. How is the matter to be settled? The mere statement of the question shows the dilemma in which we would be placed at every election, if the tenure of stability of an office depended upon a legal inquiry as to whether the people knew the characters of the individuals they had elected to office, and had exercised a proper discretion.

However much it may be desired to have men of high integrity and honesty to fill our public offices of trust and honor, yet, by our Constitution and the fundamental principles of our Government, no particular scale of integrity, honesty, or morality is fixed. No inquisition as to what character had been can be held; it is

enough that the people have willed the person should hold the office, and the courts, which are but the mere creatures of the public, will have no power to interfere.

The Constitution provides, as we have seen, that *a person cannot be impeached after he is out of office;* then, if the same person should be re-elected to the same office a year afterward, would this right of impeachment be revived? In fine, by his re-election, would he incur any other liabilities or acquire any other rights than those incident to his present term of office? We think a moment's reflection would convince each person that it would not.

Again, could an officer be deprived of his present office by impeachment for misconduct in another and different office, or even the same office, twenty years before his present term commenced? If not, could he after one year or one moment had elapsed? The time is nothing; the question is, is he out of office? It matters not if the next moment he is inducted in.

The committee think it clear, in every light they have been able to view this matter, that the Constitution *intended to confine impeachments to persons in office, and for offenses committed during the term of the office for which the person is sought to be removed.* In pursuance of this conclusion, the committee recommend to the House the adoption of the following resolution:

Resolved, That the committee of investigation into the official conduct of State officers, and of persons *lately* but *not now holding office*, be instructed—

1. That a person whose term of office has expired is not liable to impeachment under section 1, article 6, of the Constitution.

2. That a person holding an elective office is not liable to be impeached under section 1, article 6, of the Constitution for any misconduct before the commencement of his term, although such misconduct occurred while he held the same or another office under a previous election.

We have been unable to find any case in which a private citizen has been held subject to impeachment for misconduct in an office formerly held by him. In the Barnard case, it is true, the court held that the accused might be convicted and removed from office on account of offenses committed in a former term of the same elective office which he was holding at the time of impeachment.

In the State of Ohio Messrs. Pease, Huntingdon and Tod held a certain act of the Legislature unconstitutional and void. At the session of the Legislature 1807–'8 steps were taken to impeach them therefor, but the resolution was not acted upon at that session. But at the next session steps were taken toward the impeachment of the offending judges, and articles of impeachment were reported against Pease and Tod, but not against Huntingdon, who, in the mean time, had been elected governor of the State, and, of course, had ceased to be a judge of the court. This discrimination is an authority in favor of the proposition that no man can be impeached after he is out of office. (Cooley on Constitutional Limitations, page 160, note 3.)

To all this the managers, as I understand them, have nothing to oppose but the arguments in Blount's case, and three words from Rawle on the Constitution. I shall refer to both; I ask the Secretary to read from the argument of Mr. Bayard in that case, 2 Congressional Annals, page 2261.

The Secretary read as follows:

I observe, it is stated in the plea, that William Blount was not an officer of the United States at the time of the act done charged in the articles of impeachment. This objection is removed if either of the grounds which we have taken be maintainable: First, that impeachment is not confined to officers, but exends to every citizen; second, that a Senator is an officer of the United States.

It is also alleged in the plea, that the party impeached is not now a Senator. It is enough that he was a Senator at the time the articles were preferred. If the impeachment were regular and maintainable, when preferred, I apprehend no subsequent event, grounded on the willful act, or caused by the delinquency of the party, can vitiate or obstruct the proceeding. Otherwise the party, by resignation or the commission of some offense which merited and occasioned his expulsion, might secure his impunity. This is against one of the sagest maxims of the law, which does not allow a man to derive a benefit from his own wrong.

Mr. CARPENTER. Please read from the argument of Mr. Dallas, page 2278, the passage marked.

The Secretary read as follows:

It would be permitted to him, however, cursorily to remark that the articles of impeachment do not charge William Blount with any crime or misdemeanor committed in the execution of his office with any act which might not have been committed by any other citizen as well as a Senator; that there was room for argument whether an officer could be impeached after he was out of office; not by a voluntary resignation to evade prosecution, but by an adversary expulsion.

Mr. CARPENTER. Now read from Mr. Ingersoll, page 2294.

The Secretary read as follows:

It is among the less objections of the cause, that the defendant is now out of office, not by resignation. I certainly shall never contend that an officer may first commit an offense, and afterwards avoid punishment by resigning his office; but the defendant has been expelled.

Mr. CARPENTER. They also cited Rawle on the Constitution, page 213, for the benefit of three words only. On page 213 Mr. Rawle says:

From the reasons already given it is obvious that the only persons liable to impeachment are those who are or have been in public office.

Three words, "or have been," is all they claim any comfort from in this passage from Rawle—an instance of the caution of a writer, in laying down a general proposition, to throw in here and there qualifications which may or may not exist. He does not discuss the question at all, or give any reason why men should be impeached after they are out of office.

In regard to the argument of Blount's counsel, it may be remarked that the question was not involved in that case. Blount had not resigned. Neither Mr. Dallas nor Mr. Ingersoll had been retained to compose an essay upon the subject of impeachment, but simply to take care of Blount in that case. It is the constant habit of counsel, in arguing a particular cause, to concede a proposition from the other side which does not affect their client. It is much easier to confess a proposition and avoid it by showing that the case is not within it, than to answer the proposition itself. Judges hold that they are not bound by an opinion upon a state of facts not before them. An *obiter dictum* does not bind the court, and *a fortiori* should not be regarded as the deliberate opinion of counsel. It was a proposition wholly immaterial in that case; and therefore counsel might confess and avoid, instead of taking time to answer the proposition on its merits. The question of jurisdiction depends upon whether the respondent holds or does not hold an office, and not whether he got out of it by expiration of his term or by resignation.

The honorable managers rest their side of this question upon three words in Rawle's Commentaries; and the admission of two lawyers in arguing a cause where the question was wholly immaterial.

Mr. McDONALD. I propose a question to the counsel.

The PRESIDENT *pro tempore*. The Secretary will report the inquiry propounded by the Senator from Indiana.

The Secretary read as follows:

If the term of office of the accused should terminate or expire pending the trial, would that operate to discontinue or abate the cause?

Mr. CARPENTER. I think it would.

Mr. THURMAN. I suppose that some time during the day the Senate will take a recess for a few minutes; and I would like to inquire of the counsel if it would suit his convenience for the Senate now to do so?

Mr. CARPENTER. I should like to go on for a few moments.

If I am right in saying that the only purpose of impeachment is to remove a man from office, when the man is out of office the object of impeachment ceases, and the proceedings must abate. There would be no further object to attain by the proceeding. Suppose the man committed suicide while his trial was progressing, would not that be good matter of abatement? Suppose he commits official suicide, by resigning, why should this not have the same effect? I have attempted to show that the sole object for which the power of impeachment was given is removal from office.

There is another proposition which I intended to argue in that connection. The disqualification clause of punishment was evidently put in for the purpose of making the power of removal by impeachment effectual. After providing that the officers of the United States might be removed on impeachment, although the President could not pardon the offender convicted and removed, yet if he could re-instate him the next morning he would have substantially the power of pardon. To prevent this was the object of the disqualifying clause; which Story says is not a necessary part of the judgment. You might impose it where you had removed an officer appointed by the President whom the President could re-instate. You could stop that by fixing disability upon the officer; and that I take to have been the sole purpose of this clause.

If I am right in this position, if the man died in the middle of the trial, or if he died after finding against him, but before judgment had been pronounced, the suit would abate. Must this court go on and sentence a man after he is dead,—either physically or officially dead? It is equally absurd to talk of removing a man from an office which he no longer fills, as to talk of removing a man from office after he is dead. So far as its effect upon the suit is concerned I see no difference between the case of his natural death and his official death. The suit abates because there is no further object to be attained by its prosecution.

Let me remind the Senate that there is not a writer on this subject who does not maintain that the power of impeachment was never intended for punishment.

This is conclusively shown by the fact that the party, after he is impeached, is to be indicted and punished for his crime. And it should be remarked that, if impeachment lies against one not in office, he must either not be punished at all, which would show the absurdity of the proceeding; or you *must* inflict the disqualification, which, Story says, you need not inflict on one removed from office.

Returning from this digression to the line of my argument, let me say that Rawle's Commentaries and the report of the Blount case were considered by Judge Story in writing his Commentaries; and he quotes from them both, but evidently disagrees with Rawle's parenthetic suggestion, and the concessions made by the counsel of Blount.

I read from Story's Commentaries on the Constitution, § 789. The fourth section of the second article is quoted as follows:

The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Story then proceeds:

From this clause *it appears* that the remedy by impeachment is strictly confined to civil officers of the United States, including the President and Vice-President. In this respect it differs materially from the law and practice of Great Britain. In that kingdom all the king's subjects, whether peers or commoners, are impeachable in Parliament, though it is asserted that commoners cannot now be impeached for capital offenses, but for misdemeanors only. Such kind of misdeeds, however, as peculiarly injure the commonwealth by the abuse of high offices of trust are the most proper and have been the most usual grounds for this kind of prosecution in Parliament. *There seems a peculiar propriety, in a republican government at least, in confining the impeaching power to persons holding office.*

I will not take the time to read further from this section, but it proceeds in answer to the suggestion made by Rawle and to the argument of Mr. Bayard and the concession made by the counsel for Blount to get rid of a point which conceded did not harm their client, or affect his case, and which they would rather concede than to argue.

Here is what Story says of Rawle, § 801:

A learned commentator seems to have taken it for granted that the liability to impeachment extends to all, who have been, as well as to all, who are, in public office.

Section 802 and section 803 bear upon the same point. I will read section 803:

As it is declared in one clause of the Constitution "that judgment in cases of impeachment shall not extend further than a removal from office and disqualification to hold any office of honor, trust, or profit under the United States," and in another clause that "the President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes or misdemeanors," *it would seem to follow* that the Senate, on the conviction, were bound in all cases to enter a judgment of *removal from office*, though it has a discretion as to inflicting the punishment of disqualification. If, then, there must be a judgment of removal from office, *it would seem to follow that the Constitution contemplated that the party was still in office at the time of impeachment.* If he was not, his offense was still liable to be tried and punished in the ordinary tribunals of justice. And it might be argued with some force that it would be a vain exercise of authority to try a delinquent for an impeachable offense when the most important object for which the remedy was given was no longer necessary or attainable. And although a judgment of disqualification might still be pronounced, the language of the Constitution may create some doubt whether it can be pronounced without being coupled with a removal from office. There is also *much force* in the remark that an impeachment is a proceeding purely of a political nature. It is not so much designed to punish an offender as to secure the State against *gross official misdemeanors.*

Mr. CONKLING. Mr. President, I should like to ask a question of the counsel. I ask it that I may understand fully his answer made to the Senator from Indiana.

The PRESIDENT *pro tempore*. The Senator from New York propounds a question, which will be read.

The Secretary read as follows:

Is there no distinction on the point of jurisdiction to try an impeachment between the case of a resignation before articles are found and the case of resignation not till after articles have been found?

Mr. CARPENTER. That is like the question considered by Messrs. Dallas and Ingersoll in their case, and which they conceded, rather than stop to answer. It is a question not material in this case, because here the resignation preceded the exhibition of the articles. Still, to answer the question, I think that even such resignation would abate the proceedings.

Mr. EDMUNDS. Mr. President, I move that the Senate sitting for this trial take a recess of twenty minutes.

The motion was agreed to; and (at two o'clock p. m.) the Senate sitting for the trial of the impeachment took a recess for twenty minutes.

The PRESIDENT *pro tempore*, at two o'clock and twenty minutes p. m., resumed the chair.

Mr. CARPENTER. Mr. President and Senators, during the recess I have reflected upon the questions proposed to me by two of the Senators; that by the Senator from Indiana, which is:

If the term of office of the accused should terminate or expire pending the trial, would that operate to discontinue or abate the cause?

And the other by the Senator from New York, [Mr. CONKLING:]

Is there no distinction on the point of jurisdiction to try an impeachment, between the case of a resignation before articles are found, and the case of resignation not till after articles have been found?

When these questions were propounded to me, I had in mind precisely the difficulty that I have inherited from the course pursued by Messrs. Dallas and Ingersoll. I was determined that the counsel who shall follow me in the next impeachment case, should not be embarrassed by any inconsiderate admission of mine. I therefore met the questions as I thought, at the moment, they ought to be answered.

The question put to me by the Senator from New York is very specific, and, in reply, I would say that a distinction exists between the case where a resignation precedes the exhibition of the articles, and the case where a resignation comes between the exhibition of the articles and final judgment. And this court might hold that after jurisdiction had attached by exhibition of the articles, or even by the formal impeachment which precedes exhibition of articles, the jurisdiction had attached, and resignation would not prevent final judgment. Speaking, however, for myself, I still incline to the opinion that, if the officer, who alone can be impeached, is out of the office before judgment of removal passes, this would abate a proceeding, which, I have endeavored to show, can only be had for the purpose of removal. It is said the law will not require a vain thing; from which I infer that the highest court in the Republic will not render a vain judgment. Having thus performed my duty to the next impeachment case, I return to my argument in this case.

I have read to the court three sections from Story's Commentaries on the Constitution, to show that he did not accept the parenthetical suggestion of Mr. Rawle, nor the concessions made by counsel for Blount. Candor compels me to read from the Commentary of Judge Story:

SEC. 805. It is not intended to express any opinion in these commentaries, as to which is the true exposition of the Constitution on the points above cited. They are brought before the learned reader, as matters still *sub judice*, the final decision of which may be reasonably left to the high tribunal constituting the court of impeachment, when the occasion shall arise.

Every lawyer knows that Judge Story was in judicial office while he was writing these commentaries; every lawyer knows his method in regard to undecided questions, in all his legal writings. When he came to any important questions, not settled by judicial decisions, he gave the arguments *pro* and *con*, and invariably declined dogmatical declarations, but it is never difficult to discern the leaning of his own mind; notwithstanding his repeated assertion that he does not intend to express an opinion. And when he says, from a particular provision of the Constitution it seems to follow so and so, or that from a provision of the Constitution it seems to result so and so, we get the inclination of his mind, although he protests he is not giving an opinion, which, indeed, might embarrass him if the question should come before him judicially.

Mr. THURMAN. Mr. President, I send to the Chair a question which I submit for the counsel to answer at this point of the argument.

The PRESIDENT *pro tempore*. The Senator from Ohio propounds an inquiry, which will be read.

The Chief Clerk read as follows:

Do or do not the remarks you have read from the debates in the constitutional convention relate exclusively or mainly to the question whether the chief executive officer in the Government should be unaccountable, as in Great Britain, or should be responsible?

Mr. CARPENTER. There were but two principal debates upon this subject in the convention. One was upon the question whether the power of impeachment should be incorporated in the Constitution; and the other was in regard to the question whether the trials of impeachments should be had in the Supreme Court or in the Senate. I do not think the precise question proposed by the Senator from Ohio was debated in the convention at all. The doctrine of kingly immunity, I think, was not debated at all. The principal point in debate was whether the power of impeachment should be conferred in regard to the President, whose tenure was only for a short term.

Mr. President, the question now pending before this court is not prejudiced by even the opinion of the House. When the report of the committee against this respondent was made in the House, the proceedings which followed were not such as to give any weight to the conclusion which was reached. Having referred on a former occasion to the disorder amid which the impeachment of the respondent in this case was carried, I will now refer to what was said by the Speaker of the House upon the subject.

The SPEAKER. The Chair is resolved that this solemn business shall not proceed in such *disgraceful disorder*, and he therefore appeals respectfully and personally to every member upon this floor to aid him in restoring and maintaining order.

That was my authority for saying that these proceedings went on in the House under a state of things denominated by the Speaker as "disgraceful disorder." If there be any appeal from the Speaker of the House of Representatives, it certainly is not to the counsel for Belknap. We are bound by the ruling of the Speaker on that question.

Let me read the remarks of Mr. HOAR in the House, not so long ago as to have been forgotten by him, in a proceeding which he denominates judicial, a manager, too, on this occasion.

I thank the honorable manager for the suggestion made the other day that, when the proceeding took place, he was acting judicially, for that gives the more weight to the opinion he then expressed:

MR. HOAR. The division of this hour, the committee being unanimous in one opinion, both republicans and democrats, seems to me to imply the opinion on the part of the chairman of the committee that it is in some way a political question. I utterly disclaim and repudiate such an idea. No person can be more desirous to punish any public officer found guilty of a crime like this charged upon the late Secretary of War than the republican members of the House. I wish simply to call attention to one matter. The gentleman from North Carolina [Mr. ROBBINS] alluded to the fact of the hasty acceptance of this resignation.

That is, the resignation of Belknap—

This House solemnly determined in the case of Whittemore that the formal act of resignation by the officer terminates the office, and that any American citizen can lay down an office held by him without the consent or acceptance of anybody whatever; it is a mere formal matter.

It is more than a matter of form to get into office, but according to the ruling of the learned judge [Mr. HOAR] it is a mere matter of form to get out. A mere resignation accomplishes this result.

Now, the gentleman from New York [Mr. BAGG] says he has not investigated the question whether after the civil office has terminated the officer can be impeached, but he thinks that the gentleman from North Carolina, [Mr. ROBBINS,] who said he had not looked at the authorities, as I understood him, has investigated it more than any other member of the committee.

Precisely what Mr. ROBBINS had read, this opinion of Judge HOAR does not state. I proceed now with the opinion:

Now, Judge Story, after full discussion, lays down the doctrine that it cannot be done.

We certainly shall not hear from the managers that Judge Story does not support the position for which we contend.

Now, Judge Story, after full discussion, lays down the doctrine that it cannot be done. In England any citizen can be impeached, and therefore the English case of Warren Hastings does not apply. In America no man can be impeached but a civil officer, and when he ceases to be a civil officer he ceases to be within the literal construction of the Constitution. In America the only judgment rendered is removal from office as the principal with the incident of perpetual disqualification to hold office, and the Constitution provides that the punishment of the offender shall take place as if the impeachment had been had by trial before a jury and a judge.

The judge (Mr. HOAR) proceeds:

Now, for these offenses there is provided in the statutes of the United States a punishment of fine and imprisonment, and perpetual disqualification to hold office. Now, sir, this man being out of office, and if found guilty it being impossible to get him back into another, I protest against this hot haste without even having the testimony printed, and determining the question whether it is expedient that all the authority of this House shall be exercised, when it is very likely that when this evidence is printed it may be found that the House may adopt the conclusion to which the committee have arrived; but it seems to me unworthy of this great occasion, and if

I stand alone, I stand here to say that this distinguished officer should not be impeached in this way under the previous question, without having the evidence in print on which he is charged, without giving these gentlemen who are sworn to support the Constitution an opportunity to decide upon the question on which such a jurist as Judge Story has expressed an opinion.

But against this array of authorities, showing that a private citizen cannot be impeached, the managers say that Belknap was in office at the time of the impeachment. It is not denied that Belknap resigned, and his resignation was accepted by the President, at ten o'clock and twenty minutes a. m., March 2, 1876; nor is it denied that the first proceedings in the House in relation to him took place after three p. m. of that day. But the managers say that, in legal contemplation, he was in office at the time of impeachment, because the law will not notice fractions of a day; and, second, that he resigned to evade impeachment, and therefore was in office for the purpose of impeachment after his resignation was accepted.

Fractions of a day! I did not suppose this case would be determined on a question of special pleading, or a fiction of law, until I heard the argument of the learned manager [Mr. LORD] yesterday. I supposed we could strike through the fog and place our feet upon the solid rock of jurisdiction. But the managers propose to hold us by a fiction. They maintain that, although the respondent had resigned, and his resignation had been accepted, nevertheless, this court must decide that he was in office all day, and until after his impeachment on the afternoon of that day, because this court cannot distinguish between the forenoon and afternoon of a day.

Suppose a man is sentenced by a criminal court to be hanged at two p. m. of a certain day; and suppose the President pardons him at ten a. m. of that day. Must he be hanged at two p. m., because the law knows no fraction of a day? We have heard of men being hanged on the gallows; hanged at the yard-arm; but we never heard of a man being hanged on the fraction of a day.

Suppose in time of war the colonel of a regiment is relieved from duty, or his resignation accepted at nine o'clock in the morning, and at four p. m. of the same day the regiment is engaged in battle. Could the colonel be court-martialed because he was not at the head of his regiment at four o'clock?

But having answered the managers on the substance of their claim of jurisdiction, we shall not yield to their fictions.

Broom's Legal Maxims, page 122, says:

> It has indeed been affirmed as a broad general principle that "the truth is always to prevail against fiction," and hence, although for some purposes the whole assizes are to be considered as one legal day, "the court is bound, if required for the purpose of doing substantial justice, to take notice that such legal day consists of several natural days, or even of a fraction of a day." Evidence may therefore be adduced to show that an assignment of his goods by a felon, *bona fide* made for a good consideration, after the commission day of the assizes—
>
> That is the term—
>
> was in truth made before the day on which he was tried and convicted, and on proof of such fact the property will be held to have passed by the assignment.

This matter is very fully discussed, exhaustively so, in 12 Common Bench Reports, at page 55, the case of Whitaker *vs.* Wisbey. Maule, judge, in stating the opinion says:

> This case has been argued before us in a very learned and elaborate manner. Every authority which could have the remotest possible bearing upon the subject has been referred to; but I must own that I have not throughout entertained the slightest doubt. The action was in trover, to which there was a plea of not possessed. The plaintiff claimed the goods in question under a deed of assignment executed on the 20th of March, 1851, by Thomas Whitaker, the plaintiff's brother. It appeared that Thomas Whitaker, the assignor, and George Whitaker, his father, were tried and convicted of felony at the last spring assizes for the county of Cambridge; that the commission day of the assizes was the 19th of March; and that the trial and conviction of the prisoners took place on the 22d. The substantial defendants in this action were the corporation of Cambridge, who claimed as grantees of the goods and chattels of felons convict, &c. It was found by the jury that the conveyance under which the plaintiff claimed was executed *bona fide* and for a valuable consideration; and he had, no doubt, a good title, unless it was taken away by the assignor's conviction.

Then he proceeds to consider the authorities, and affirms the doctrine to be found in the syllabus, which I will read:

> An assignment of a felon's goods, *bona fide* made for a good consideration, after the commission-day of the assizes, but before the day upon which he was actually tried and convicted, will pass the property.

The particular point decided is of no consequence, but it contains an examination and discussion of all the modern cases on the subject. The question came before Judge Story, (2 Story's Reports, 571,) a case remarkable for the clear manner in which the question was presented to the court. The syllabus of the case is this:

> The doctrine, that, in law, there is no fraction of a day, is a mere legal fiction, and is true only in respect to cases where it will promote right and justice.
>
> By the Constitution of the United States, every bill takes effect as a law, from the time when it is approved by the President, and then its effect is prospective and not retrospective.
>
> A petition for the benefit of the bankrupt act was filed in the district court on the 3d day of March, 1843, about noon; the act of the 3d of March, 1843, repealing the bankrupt act, passed Congress, and was approved by the President, late in the evening of the same day. *Held*, that the court had jurisdiction of the petition at the time when it was filed and acted upon, and that it had full jurisdiction to entertain all proceedings thereon, to the close thereof, according to the provisions of the bankrupt act.

I should say here that the repealing act saved all cases and permitted them to proceed to final termination, which were commenced before the repeal of the act. This petition was filed about noon. The act was not repealed till late in the evening, and Judge Story held that he would take notice of the fraction of a day, and sustained the proceeding—the jurisdiction of the court. This decision contains a full examination of all the authorities on the question.

II. I come now to the question of the materiality of the issues of fact joined in this case upon pleadings subsequent to the articles of impeachment; or, to state the question in different terms, if a private citizen cannot be impeached for offenses committed in an office previously held by him, or during the time he held a public office, can he be amenable to impeachment, provided he resigned the office for the purpose of evading impeachment?

In general, it may be said that the legal effect of an act which one has a right to perform, and does perform, cannot be affected by the motive which induced its performance. The respondent was Secretary of War, and on the 2d day of March, 1876, at 10.20 a. m., he resigned, and the President accepted his resignation. It will be conceded that from that moment he was out of the office and became a private citizen. The consequences which result from his leaving the office and becoming a private citizen attach absolutely to the resignation and acceptance. Whether he resigned because he was weary of the office, dissatisfied with the compensation, or because he no longer wished to perform the duties and meet the responsibilities and incur the liabilities incident to a public officer, is immaterial as regards the effect or consequence of his resignation. If, as I have endeavored to show, no one who is a private citizen can be subject to impeachment, then the only material question is whether or not Belknap ceased to be Secretary of War on the 2d of March, at 10.20 in the forenoon, and became a private citizen. If the resignation was only pretended, not actual, if what took place between him and the President was a mere sham and did not vacate the office of Secretary of War, then of course he remained Secretary of War and subject to impeachment; and if this court should sustain jurisdiction upon the ground that what took place did not vacate the office, and on the final trial should acquit Belknap of these charges, it would follow that Belknap, never having ceased to be Secretary of War and being acquitted of the charges, is Secretary of War still, and he must be re-instated in the office. This is a *reductio ad absurdum*. For, proceeding upon the resignation as a fact, the President has nominated and the Senate confirmed Mr. Taft as successor to an office rendered vacant by Belknap's resignation.

The principle that the consequences of an act legally performed attach to its importance, without regard to the motives which induced it, is settled by the Supreme Court in McDonald *vs.* Smalley and others, 1 Peters, 320. The Constitution and laws give the Federal courts jurisdiction over controversies between citizens of different States. McArthur, a citizen of Ohio, claimed title to a piece of land in that State which was also claimed by other citizens of that State. Owing to a conflict of decisions between the State courts of Ohio and the circuit court of the United States for that district, McArthur's title would have been held void by the State courts and valid in the United States court. And McArthur, to evade the jurisdiction of the State courts, conveyed the land to McDonald, a citizen of Alabama, for a stipulated price, and received payment. Suit was brought by McDonald in the Federal court for Ohio, and the jurisdiction of the court was contested, and denied by that court, upon the ground that the *motive* for the conveyance was to give the grantee a *status* in the Federal court. The case was brought to the Supreme Court, where Marshall, C. J., delivered the opinion. He says:

> The single inquiry must be whether the conveyance from McArthur to McDonald was real or fictitious. * * * The testimony shows, we think, a sale and conveyance to the plaintiff which was binding on both parties. * * * The motives which induced him [McArthur] to make the contract, whether justifiable or censurable, can have no influence on its validity. They were such as had sufficient influence with himself, and he had a right to act upon them.

And the court held that jurisdiction attached after the conveyance, without regard to the motives which induced the conveyance. This principle was repeated in Smith *vs.* Carnochan, 7 Howard, page 198.

Suppose two citizens of the same State are involved in an important controversy, and one of them, for the purpose of suing the other in a Federal court, removes to another State, and commences suit in the Federal court of the State from which he removed, is it not manifest that the only question which could affect the jurisdiction would be whether his removal was real or only colorable? If he had in fact become a citizen of the other State, his right to sue in the Federal court could not be questioned. If, on the contrary, he had only pretended to remove, and had not actually removed, then he would remain a citizen of the former State, and be incapable of invoking Federal jurisdiction. Many years ago one of the honorable managers, [Mr. LYNDE,] then a patriarch, and myself, a neophyte in the profession, in our own State, were retained for a client in a controversy with a railroad company of that State. Under professional advice, the soundness of which, I believe, never was questioned, he removed to Illinois, and commenced and successfully prosecuted his suit in the Federal court for Wisconsin. His removal was actual, and nobody denied the consequence of his citizenship in Illinois, although everybody knew that he had acquired that citizenship in order to enjoy the benefit which it conferred upon him to sue in the Federal court for Wisconsin.

So in this case, Belknap having actually resigned, and his resignation having been accepted, so as to vacate the office, as matter

of fact; having laid aside his official character, and resumed that of a private citizen, is entitled to enjoy all the rights, privileges, and immunities pertaining to private citizenship; not the least of which, I reckon, is exemption from the criminal jurisdiction of this court. And hence it follows that the issues of fact joined in this cause, as to whether or not he resigned, and resumed the character of a private citizen for the purpose of enjoying the immunity belonging to it, are immaterial to the proper determination of this cause.

III. Can the House of Representatives support the jurisdiction of this court by new matter alleged in its pleadings subsequent to the articles of impeachment?

This court can only acquire jurisdiction, in a proceeding of impeachment, by articles presented by the House, showing a case of impeachable criminality; that is, a case where the act complained of is impeachable, and the actor subject to impeachment. In other words, the articles must be such as to require no aid from subsequent pleadings. In this case the articles describe the respondent as "late Secretary of War." Within the strictness of allegation required by common law criminal courts such *descriptio personæ* would not be equivalent to an allegation that he was no longer in that office. Therefore, and to meet the view sometimes entertained that a citizen holding one office may be impeached for misconduct in another, we interposed the plea to the jurisdiction, stating affirmatively that, at the time of impeachment, the respondent was not any officer of the United States. He was impeached at the bar of the Senate—if formal announcement that articles would be presented against him is an impeachment—on the 2d day of March, A. D. 1876. Some of the articles charge that he continued to be Secretary of War *to* or *until* (I forget which) the 2d day of March. This excludes the 2d day of March from his holding office; therefore, if we are right in contending that only a person holding office can be impeached, the articles fail to show a case within jurisdiction.

And I think it would have been safe for us to demur to the articles. But not wishing to take risks upon a technical construction, we thought it safer to plead affirmatively the fact that the respondent was not holding any office at the time of impeachment. Undoubtedly, to any plea of the respondent in confession and avoidance of the articles, the prosecution might have replied in confession and avoidance; but not so to a plea which, in substance, is a denial of any fact which should have been stated in the articles, to show jurisdiction. If the articles themselves are deficient in not stating any fact necessary to entire jurisdiction, jurisdiction of the offense and the offender, then this court never acquired jurisdiction.

It results from the fact that this court has only a special jurisdiction, that the first pleading must show a case within the jurisdiction. This was held with regard to jurisdiction of circuit courts of the United States in Brown *vs.* Keene, 8 Peters, 112; Jackson *vs.* Ashton, 8 Peters, 148; Hodgson *vs.* Bowerbank, 5 Cranch, 303; Mossman *vs.* Higginson, 4 Dallas, 12; and Jackson *vs.* Twentyman, 2 Peters, 136.

The honorable manager [Mr. LORD] yesterday referred us to two cases,—2 Chitty's Reports, 367, and 2 Maule & Selwyn, 75. These were actions of *quo warranto*, that is, civil suits to try the title to an office, to be followed by a judgment for damages and costs. The court held, what everybody would concede, that resignation did not preclude final judgment.

One Senator at least, Senator HOWE, will remember a somewhat remarkable case of this kind in our own State, where he happened to be on the winning, and myself on the losing, side. I refer to the case State on the relation of Bashford *vs.* Barstow. In this case, after the court had declared its jurisdiction, the attorney-general came into court, and filed a discontinuance.

But the court held that the case was really a civil cause, in favor of the relator, against Barstow, who was in possession of the office; that the State had no interest in the question, and was only a formal party.

The learned manager also asserted that in a criminal cause there could be no such thing as a replication and rejoinder. If he will take the trouble to examine Wentworth's Pleadings he will find that he is in error; and if he will examine Archbold's Criminal Pleadings, he will find the very forms from which we have drawn our pleadings subsequent to the plea in abatement.

Senators, I have performed my duty in the argument of this question; and have but to thank you for the patient attention you have given me. I consider this the most important question ever submitted to a court in the United States. If we would avoid the convulsions which disturb and disgrace South American republics, this jurisdiction must be denied.

If, in the revolutions which occur in politics, an administration is not only to be driven from power, but subjected to impeachment; if political overthrow is to be followed by criminal convictions and political disfranchisement, at the hands of an incoming administration, which is to take its course in office, and in turn to be subjected to like disgrace and condemnation, it will not be long until impeachments, instead of being the nation's great effort to punish enormous offenders in the interests of the people, will be degraded, and only perform the office of the guillotine upon displaced statesmen.

The PRESIDENT *pro tempore*. The managers will proceed. Senators will please give their attention.

Mr. Manager KNOTT. If the court please, Mr. President, in a government instituted by a free people for the preservation of their own liberties, the protection of their own interests, and the promotion of their own prosperity, it is certainly a matter of paramount consequence that the amplest possible provision should be made for securing the purity and efficiency of its administration, not only by the prompt removal of those who may be guilty of criminal misconduct in office, but if necessary by signalizing their infamy, as Mr. Hamilton felicitously expresses it in one of his essays in the Federalist, "by a perpetual ostracism from the esteem, and confidence, and honors, and the emoluments of their country."

So far as the executive and judicial departments of our own Government are concerned, it is evident that the framers of our Federal Constitution intended to accomplish this important end through the various provisions relating to the subject of impeachment contained in that instrument; and the real question now under consideration is whether they failed to accomplish that object or not; whether the means devised by them for that purpose are sufficient to enable the people of this country, acting through their regularly constituted authorities, to preserve the purity and maintain the integrity of their own Government, or whether those means are so ill-adapted to the great end designed, so utterly and ridiculously inadequate in fact, that any official criminal, no matter how flagitious his conduct may be, can literally set them at defiance. In a word, whether you exercise the functions devolved upon you to-day as the highest court known to our Government by virtue of a constitutional power, or merely at the will and pleasure of the accused. For, sir, these are the elements of the proposition now seriously introduced and gravely insisted upon here, that a party may be guilty of any criminal misconduct in office and evade the penalty prescribed for his crimes by the simple act of resignation.

The mere statement of such a proposition is sufficient to indicate the gravity of its nature, and perhaps it is not too much to say that one of greater importance or of profounder interest could not be presented for the consideration of this exalted tribunal. However disreputable the offenses may be which are charged against the defendant, however much he may deserve the execration of his fellow-men if those accusations are proven to be true, the mere question of his guilt or innocence sinks into insignificance when compared with the one under immediate discussion, not only because the latter calls in question one of the most important prerogatives of the House of Representatives as well as one of the highest powers of the Senate; not merely because it denies the power of the people to protect and maintain the purity and the integrity of their Government in the amplest manner prescribed in their Constitution, but because it has now for the first time to be authoritatively determined, and because that determination, whatever it may be, will stand as a precedent through all coming time, or at least until the nature and character of our institutions shall have been completely transformed.

It is true, sir, that a somewhat similar question was raised in the very first impeachment which occurred after the adoption of our Federal Constitution, the case to which such frequent allusion has been made since the institution of the present proceedings. I allude of course, as the Senate well understand, to the case of Blount, who was impeached in 1798 for conduct inconsistent with his station and duties as a Senator of the United States; but in that case the point was but feebly insisted upon, and never decided by the Senate at all; the whole case having turned, as this court well understands, upon the point that a Senator of the United States was not, in the contemplation of the Constitution, amenable to the process of impeachment under any circumstances whatever. I may add, however, that even the decision of that point has not been accepted by some of the ablest commentators upon the Constitution as sufficient authority to establish a principle; not only because it was the decision of a divided court, 14 to 11, but because the arguments by which it was sought to be sustained, so far as they have been preserved, appear to be, to say the least of them, more technical and specious than sound. But so far as the question at bar is concerned, the Blount case cuts no figure as authority at all for the reason I have stated, that it was not adjudicated by the court at all. The only adjudication from which anything resembling a legitimate analogy to the point under discussion may be drawn, is the case to which frequent allusion has also been made by both the learned counsel for the respondent, that of Judge Barnard, of New York; and their remarks and my own upon that case may serve as illustration of how very widely lawyers upon the opposite sides of the same case may differ in their views in regard to authorities adduced.

If the court will pardon me, I will call attention as briefly as I can to the point in that case which bears some analogy to the question now under consideration. Barnard was impeached as a judge of the supreme court of the State of New York during his second term of service in that office. In eleven out of the thirty-eight articles of impeachment preferred against him he was accused of malconduct committed during his former term, which, as a matter of course, had expired before the articles of impeachment were preferred. To these eleven articles he interposed a plea to the jurisdiction of the court upon precisely the ground taken by the counsel for the respondent in this cause, that the tenure of office during which those offenses were committed having expired his amenability to impeachment for those offenses expired with it. That was the point made, that the very moment his term of office expired by lapse of time that very moment the

jurisdiction of the assembly to prefer articles of impeachment against him and of the high court of impeachment of New York to try him was gone. And it should be borne in mind that upon the trial of the issue raised upon that plea-matter of Phil. C. Fuller, which has been dwelt upon with considerable unction by both the learned counsel on the other side, was brought fully into review and deliberately repudiated and overruled by the highest court of the very State in which it occurred, and in the lower house of the Legislature the resolutions that have been insisted upon here as authority upon the point under consideration were offered. A Senator very pertinently inquired upon yesterday whether the resolutions reported in the case of Fuller and which had been referred to by the learned counsel had been adopted by the house in which they were offered. The learned counsel was unable to give the Senator the desired information, and so am I, because I have not considered the question of sufficient importance to investigate it, simply for the reason that, whether adopted or not, the doctrine they announced was distinctly and deliberately repudiated and overruled by the only court in which they were ever cited as authority before this, and that, too, by the highest court in the State in which the transaction took place, and upon an issue almost precisely similar to the one at bar.

The plea to the jurisdiction in that case as to the eleven articles I have referred to was, after elaborate argument, overruled by a vote of 23 to 9; nineteen senators and four judges of the court of appeals holding that a party could be impeached notwithstanding the expiration of the term of office in which he committed the offense, against the votes of six senators and three judges who held that he was not so impeachable.

There, sir, is the whole of the Barnard case, so far as there is anything in it applicable to the question under discussion. I will add, however, that the most cogent reason urged by counsel in support of the plea to the jurisdiction in that case, as it seems to me, was that the office held by the accused was an elective office; that the people themselves had it directly in their own power to preserve its purity by refusing to re-elect a man who had abused their confidence and betrayed his trust by the perpetration of official crimes; that they had condoned his offenses, if he were in fact really guilty, and that the court of impeachment had no authority consistently with the theory of government in that State to countervail the will of the majority by removing a man from office for offenses alleged to have taken place before his election and of which the electors were supposed to be aware when they elected him.

If, therefore, the decision in that case is entitled to any consideration whatever as authority here, it derives additional weight from the fact that, in that instance, the people had the power to protect themselves at the ballot-box; notwithstanding which, the court intervened, and, in order to maintain the purity of an office intended for the protection of their interests, convicted and removed an officer therefrom, on account of crimes committed before his election, and which, so far as their votes could do it, had been by them condoned; whereas in the case at bar the only security the people can have is in the conviction and disqualification of the accused, if he should be proved to be guilty of the crimes alleged against him.

I apprehend, however, that the question now under consideration will be settled upon its own peculiar grounds; that it will be determined not by what the framers of the Constitution did *not* do in convention, but by what they did; not by what they *omitted* to express upon the face of the instrument framed by them, but by what they there declared should be the fundamental law of the land. In a word, that it will be determined upon a fair and reasonable construction of the various provisions of the Constitution relating to the subject of impeachment, considered as component parts of a plan of government instituted by the people themselves for the promotion of the general good; that the object and purpose for which those provisions were enacted will be kept constantly and distinctly in view; and that the language in which they are expressed will receive at your hands such a construction as will promote, and not defeat, those objects and purposes; that no theory which may be predicated upon any isolated provision will be permitted to countervail the general intent of the whole.

These views, which I think are fairly deducible from leading decisions in the Supreme Court of the United States, are expressed far more succinctly, far more elegantly, and far more forcibly than I have the capacity to express in section 419 of Mr. Story's Commentaries upon the Constitution, to which I beg leave to call attention. After having reviewed a number of leading cases upon constitutional construction, he says:

> § 419. (4.) From the foregoing considerations we deduce the conclusion that, as a frame or fundamental law of government, the Constitution of the United States is to receive a reasonable interpretation of its language and its power, keeping in view the objects and purposes for which those powers were conferred. By a reasonable interpretation, we mean that, in case the words are susceptible of two different senses—the one strict, the other more enlarged—that should be adopted which is most consonant with the apparent objects and intent of the Constitution; that which will give efficacy and force, as a government, rather than that which will impair its operations and reduce it to a state of imbecility. Of course we do not mean that the words for this purpose are to be strained beyond their common and natural sense; but, keeping within that limit, the exposition is to have a fair and just latitude, so as on the one hand to avoid obvious mischief and on the other hand to promote the public good.

I will not consume the time of Senators or abuse their patience by an attempt at an idle and unnecessary display of irrelevant learning, but with these principles in view will simply ask the indulgence of the Senate while I read the various provisions of the Constitution relative to this subject, in the order in which they should be collated if they are to be considered as a systematic whole; and in my comments upon them I do not wish to be understood that the House of Representatives, which I in part represent here, and very imperfectly at that, shall be held responsible for or in any manner bound by anything I shall say. It may be true, as argued by the learned counsel, that Mr. LAWRENCE constituted the soul and essence of the Fortieth Congress, and because he saw proper of his own volition and for his own amusement or improvement to supply the honorable managers of the impeachment of President Johnson with a vast array of authorities, whether relevant or irrelevant, that therefore not only the Fortieth Congress but all subsequent Congresses are bound to admit everything contained in his collation of adjudged cases as law. I will not dispute that proposition with the learned counsel. I only desire to say that so far as I am concerned I do not wish to be understood as being the House of Representatives myself or as having it in my power or as even wishing to estop them from asserting any views they may see proper in opposition to my own opinions either now or hereafter.

The first provision on this subject which locates the power of instituting the proceedings by impeachments is the fifth clause of the second section of the first article, and is as follows:

> The House of Representatives * * * shall have the sole power of impeachment.

The second, which designates the tribunal in which the trial shall be had and prescribes certain general regulations with regard to the procedure, is found in the sixth clause of the third section of the same article, and is as follows:

> The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the President of the United States is tried the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

These are the jurisdictional clauses. The fourth section of the second article prescribes peremptorily what judgment *shall* be given upon impeachment and conviction in certain particular cases, taking away from the court all discretion in that regard whatever, in the following terms:

> The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

The seventh clause of the third section of the second article, which was evidently intended to limit the extent of the judgment and define the boundary beyond which the court, in no instance, is authorized to go, is as follows:

> Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

While, to conclude the whole, the last sentence of the first clause of the second article places the restoration of the party convicted forever beyond the reach of executive clemency by providing that the President—

> Shall have power to grant reprieves and pardons for offenses against the United States, *except in cases of impeachment.*

I have now read everything contained in the Constitution in any manner relating to the subject; and if any respect is to be paid to the language employed, as is required by the first and most obvious of all the rules of legal interpretation, it will be observed that there is not a solitary syllable in any of the provisions to which I have called attention which either expressly or by any necessary implication limits the power of the House of Representatives to prefer or of the Senate to try articles of impeachment to the time during which the party accused shall remain in office, or to any other time whatever. We may concede, if we see proper, that a person can be impeached for no offense unless it be committed while in office. We may even go further; we may admit that the offense must be under color of the office or in some manner connected with the discharge of official duty; but the very moment the impeachable offense is committed, whatever that offense may be, the guilty party becomes liable to impeachment, and there is not a word in any clause of the Constitution which upon any reasonable construction can be said to relieve him from that liability upon the simple termination of his official service, whether it be by resignation or otherwise. The very moment the offense is committed, the power of the House to impeach attaches; that very instant it becomes complete; and unless there is some positive provision of law taking that power away or limiting its exercise to some particular time or by some particular circumstance, it seems to me that it must necessarily continue in full until it is exhausted upon the trial and acquittal or conviction of the accused whether he remain in office or not.

Learned counsel for the defendant, however, have affected to discover some such limitation in the fourth section of the second article, which provides that "the President, Vice-President and all civil officers of the United States, shall be removed from office upon impeachment for, and conviction of, treason, bribery, and other high crimes and misdemeanors;" and in the other provision which prescribes that

judgments in cases of impeachment shall not extend further than to removal from office and disqualification to hold any office of honor, trust, or profit under the United States; and they have invoked the authority of Mr. Justice Story in aid of that theory, quoting section 803:

SEC. 803. As it is declared in one clause of the Constitution that "judgment, in cases of impeachment, shall not extend further than a removal from office and disqualification to hold any office of honor, trust, or profit under the United States;" and in another clause, that "the President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes or misdemeanors," it would seem to follow that the Senate, on the conviction, were bound in all cases to enter a judgment of removal from office, though it has a discretion as to inflicting the punishment of disqualification.

But why, may I be permitted to ask, should it follow, or even *seem* to follow, from the premises laid down by the learned commentator, that the Senate are bound in *all* cases to enter a judgment of removal from office? I grant that, if at the time of conviction the party convicted is in office, all discretion is taken from the Senate; by the fourth section of the second article they are then bound to remove him. But there is not a syllable in either one of these provisions which, either expressly or by any necessary or reasonable implication, takes away from the Senate the power to disqualify, although the power to remove may have been taken away by the resignation of the party accused.

For centuries and down to a time within the memory of many Senators present, the sixth year of the reign of George IV, I believe, certain classes of persons in England were allowed, upon being convicted of particular felonies, to plead the benefit of clergy, and, in case their prayer were allowed, instead of being hanged, as they otherwise would have been, the judgment prescribed by the statute was that they should be burned upon the brawn of the thumb of the left hand. Now, if you would fully appreciate the logic of the text; if you would realize to its utmost extent the force of the position that you cannot disqualify because you cannot remove, that you cannot render a portion of the judgment because you cannot the whole, you have simply got to imagine the Lord Chief-Justice of the court of King's Bench, wrapped in the amplitude of his magisterial gown, solemnly announcing to a trembling culprit whose left hand had been amputated that he must go hang because it was a physical impossibility for the sheriff to apply the branding-iron to the precise spot prescribed by law! The commentator continues:

If, then, there must be a judgment of removal from office, it would seem to follow that the Constitution contemplated that the party was still in office at the time of impeachment. If he was not, his offense was still liable to be tried and punished in the ordinary tribunals of justice.

Certainly it would seem to follow, if the party was in office, that the Constitution contemplated that he should be removed upon conviction, for that is precisely what the Constitution prescribes. It is evident that this learned writer has simply transposed the terms of the proposition. Had he said, "if then the party was still in office at the time of impeachment, it would seem to follow that there must be a judgment of removal from office," he would have said precisely what the Constitution says; only that and nothing more; and he would have conveyed precisely the idea intended to be conveyed by the framers of the Constitution in employing that language. He proceeds:

And it might be argued with some force that it would be a vain exercise of authority to try a delinquent for an impeachable offense when the most important object for which the remedy was given was no longer necessary or attainable.

Certainly, it might be argued with some force, if it were true that the only object, as argued by learned counsel on the other side, or even the most important object of an impeachment, was simply the removal of the official criminal from office. But such, I apprehend, is not by any means the only or the most important object to be attained by this mode of procedure, as we shall presently see.

And although a judgment of disqualification might still be pronounced, the language of the Constitution may create some doubt whether it can be pronounced without being coupled with a removal from office.

Of course not. If you pronounce a judgment of disqualification absolute, that *ipso facto* removes the delinquent from office; there can be no doubt about that.

There is also much force in the remark that an impeachment is a proceeding purely of a political nature. It is not so much designed to punish an offender, as to secure the state against gross official misdemeanors. It touches neither his person nor his property, but simply divests him of his political capacity.

This closing sentence suggests directly what it seems to me is the pivotal idea on which the question under discussion must turn, and that is, what is the real object and purpose of impeachment?

Mr. President, I dislike exceedingly to ask the favor at the hands of the Senate, but I am really suffering such physical pain that it would be a great accommodation to me if the court would adjourn.

Mr. EDMUNDS. I move that the Senate sitting for this trial adjourn; and that by the rules will be until twelve o'clock to-morrow, rather than half past twelve o'clock. This will save half an hour.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from Vermont.

The motion was agreed to; and the Senate sitting for the trial of the impeachment adjourned.

SATURDAY, *May* 6, 1876.

The PRESIDENT *pro tempore* having announced that the time had arrived for the consideration of the articles of impeachment against William W. Belknap,

The usual proclamation was made by the Sergeant-at-arms.

The managers on the part of the House of Representatives appeared in the seats provided for them.

The respondent appeared with his counsel, Mr. Blair and Mr. Black.

The PRESIDENT *pro tempore*. The Secretary will give the usual notice to the House of Representatives.

The Secretary read the journal of the proceedings of the Senate sitting yesterday for the trial of the impeachment of William W. Belknap.

Mr. THURMAN. I move a call of the Senate.

The PRESIDENT *pro tempore*. The Senator from Ohio moves a call of the Senate. Is there objection? The Chair hears none, and the roll-call will proceed.

The Chief Clerk called the roll, and forty-two Senators answered to their names.

The PRESIDENT *pro tempore*. There is a quorum present. The Senate is now ready to hear the managers.

Mr. CONKLING. Mr. President, I have in my hand two questions, which I wish to ask, and I will send them up now as there is less likelihood of there being an interruption to the managers at this time than after they have proceeded with the argument.

The Secretary read as follows:

1. If two persons guilty of crime in office cease to be officers at the same time, one by removal and the other by resignation, is one rather than the other subject to impeachment afterward? If a distinction between the two cases exists, please state it.

2. Is a private citizen liable to impeachment under the Constitution of the United States?

If his having previously held an office distinguishes him in this respect from other citizens, please trace the distinction to the clause of the Constitution, or to the principle in which it is found.

Mr. MITCHELL. I should like to submit an inquiry at this time, so as not to interrupt the managers after they proceed.

The Secretary read the question of Mr. MITCHELL, as follows:

The Constitution provides that when the President of the United States is tried on impeachment, the Chief Justice shall preside. Suppose a late President were impeached for high crimes and misdemeanors committed while President, and presented at the bar of the Senate for trial, who would preside, the Chief Justice or the President of the Senate?

The PRESIDENT *pro tempore*. The Senate is now ready to hear the managers.

Mr. Manager KNOTT. Mr. President——

The PRESIDENT *pro tempore*. Senators will please give their attention.

Mr. Manager KNOTT. When the Senate did me the very great kindness to adjourn yesterday evening, I was suffering intensely from a very painful affection of the eyes, with which I have been afflicted for some time. I am sorry to say that I find myself in no better condition this morning. By an arrangement between my colleagues and the counsel who is to conclude this argument, I ask the privilege of the Senate to conclude my remarks on Monday, inasmuch as the argument will not be closed before that time, and that in the mean time my colleagues who desire to be heard may proceed. If there is no objection to that arrangement, I hope it will be made, as it would be a matter of considerable inconvenience for me to go on at this time.

The PRESIDENT *pro tempore*. The Chair hears no objection to that arrangement.

Mr. Manager JENKS. Mr. President and Senators, with reference to the questions which have been submitted by the honorable Senators, I will say that if in the course of the discussion of the subject, as we shall enter upon it and conclude it, they are not answered, we shall then take them into consideration. They will be considered in the course of the argument before the managers shall have closed the discussion. At present I conceive to a great extent they will be discussed in what I shall present in the body of my argument.

The resolution on which this discussion is progressing is the following:

That the Senate proceed first to hear and determine the question whether W. W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office; and that the managers and counsel in such argument discuss the question whether the issues of fact are material, and whether the matters in support of the jurisdiction alleged by the House of Representatives in the pleadings subsequent to the articles of impeachment can be thus alleged if the same are not averred in said articles.

There are two main propositions involved in this resolution; first, whether the Senate, notwithstanding the resignation of the defendant, can take jurisdiction of this cause; and, second, whether the facts surrounding his resignation are pertinent to be considered with reference to the effect of that resignation. As a general answer to this, we would say that any and every case should always be adjudged upon its own standing, because you can seldom, if ever, find two cases that are strictly analogous. You cannot determine the effect of this resignation without inquiring concerning all the facts and circumstances surrounding it. As was stated by the learned counsel for the

defendant yesterday, the fact whether it was colorable or not might be a pertinent question. The fact whether it was *bona fide* intended that it should be really an existing resignation or whether it was only a temporary resort to evade this proceeding, might be a material question. Whether it is charged that that is so or not does not affect the relevancy of the consideration of all the facts attending it; but you must judge every case upon its own merits, and whatever facts are essential to arrive at a correct conclusion in that case should be taken into consideration.

Of the second portion of this proposition, which is concerning the collateral facts, I shall say but little, if anything, more than this: It has been considered by the chairman of the managers; he has advanced three or four propositions in support of the view that it is material to consider all the surrounding facts. One of those propositions is, that in law there is no fraction of a day. He has cited authorities to establish that; that was the general rule, that in law there is no fraction of a day. This being the general rule, an exception was introduced by the honorable counsel for the defendant, that is, that if it be necessary to subserve the purposes of justice, a court will consider the fractions of a day. Then the matter stands thus: As a rule, courts will not recognize the fractions of a day; but as an exception, if it be necessary to subserve the purposes of justice, they will recognize the fractions of a day. Hence, when the counsel cited those authorities to show that they would consider it as an exception, it was essential to show that it was necessary to subserve the purposes of justice to bring his case within the exception. He left off just where the real contest began: is it necessary to subserve the purposes of justice that this court should recognize the fractions of a day? It seems to me that there is no necessity in subserving the purposes of justice, that this court should recognize any fraction of a day. Put the question in this form: How can it subserve the interests of justice, when a defendant is charged with having surreptitiously filched from the pockets of from eight hundred to a thousand men from ten to twenty-five cents every day for five years, that that defendant shall plead this as an excuse that the ends of justice are subserved by recognizing the fractions of a day? If he had discussed this, and shown that this defendant would have been wronged did you not consider it, he would then have brought his case within the exception; but, having failed to do that, he leaves it as my colleague, the chairman, left it; that is, that the general rule, if the defendant have not brought himself within the exception, still exists, and the court will not recognize the fractions of a day.

With reference to the question of relation, that was not considered at all by the counsel for the defendant, and we shall leave it as our chairman has left it, with you, and enter upon what to us seems to be the main and material question in this cause, and one in which with all deference we feel satisfied that the constitutional law sustains our position. That is, has the Senate sitting as a court of impeachment jurisdiction over a defendant who by his resignation after the crime committed claims to be placed beyond its jurisdictional power? Jurisdiction is limited in one or more of three ways. It is limited territorially, or as to place; it is limited as to subject-matter; or it is limited as to person. Territorially, jurisdiction may be waived or may be conferred. As to subject-matter or as to person, it is never too late to plead it, and it can neither be waived nor conferred at the will of the parties. Then we will consider this in these three aspects.

Territorially, the Senate of the United States has jurisdiction co-extensive with the earth. Whether the offense be committed in Washington, London, Rome, or Pekin does not affect the right to judge the offender.

As to the character of the offense, it takes cognizance rightfully of all impeachable offenses. As the plea in this case does not deny the offense charged in the articles to be impeachable, it is unnecessary to discuss what constitutes an impeachable offense, except so far as the question may *incidentally* arise in determining the persons who are criminally answerable before this tribunal.

In further illustration of this, we would here state that it does become material to consider what impeachment means, in order to determine how far the jurisdiction of this court extends as to persons.

By the prosecution it is maintained that any person who is or has been a civil officer of the United States who while in office committed an impeachable crime is before this court subject to trial and punishment.

By the defense it is claimed that, if the criminal resign at or before the time the proceedings for his punishment are instituted, thereby the jurisdiction of the court is ousted and the criminal as to the punishment consequent upon impeachment is forever discharged. The antagonism between these two propositions is what the court by the defendant's plea and the replication on the part of the House of Representatives and the people is called upon to settle. On account of this issue the case under consideration is one of supreme importance. On the one hand, if a criminal may commit a crime of character so atrocious that the lives of thousands or the liberties of millions are endangered or destroyed thereby and by his own act it will condone the offense, then the power of impeachment granted by the Constitution for the maintenance of official purity is a chimera, the august tribunal established by the Constitution for its judgment almost an idle pageant.

On the other hand, if after the commission of an impeachable offense no life of purity, no years of penitent grief, no deeds of patriotic devotion, can efface the stain, but the citizen must be forever at the mercy of the prosecuting tribunal, until only in the rest of the grave oblivion is found, then official life is truly one of grave responsibility. To determine this contention no authority except the Constitution can be adduced. Other courts, like the planets, may shed their reflected light of precedent; the musty volumes of historic lore may afford analogies; adjudications of similar tribunals may suggest parallels; but from no source except the Constitution, illuminated by the sunlight of reason, can the command come: Thus shall this judgment be rendered.

In the second section of the first article of the Constitution it is provided that—

> The House of Representatives * * * shall have the sole power of impeachment.

If the word "sole," which only qualifies the power by preventing any other person or branch of the Government from exercising it were left out, the clause would read:

> The House of Representatives *shall* have the power of impeachment.

It is not a possible grant of power, but an absolute one. If this clause had declared "the House of Representatives *may* have the power" it would indicate a grant that might exist or might not, dependent upon some contingency outside of the Constitution, such as the willingness of the Senate to entertain the impeachment, or the willingness of the defendant to be impeached, or many other contingencies that might be imagined; but the people in the organic law have said the power *shall* exist. Whatever that power may be is granted, not in part, not with qualification, but in *full plenitude*, as the words signified at the time of the formation of the Constitution, unless by some succeeding article in the fundamental law that power is restricted. What the power of impeachment consisted in will be considered as further progression is made in the argument.

The present inquiry will be, are there any restricting or limiting clauses in the Constitution which take away any portion of that which has been considered.

In the third section of the first article the court is constituted before which the power of the House of Representatives shall be exercised in the following words:

> The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

The first clause of this portion of the third section, "the Senate shall have sole power to try *all* impeachments," is the constitutional grant of jurisdiction to this honorable court. Whatever or whoever is embraced in this grant may rightfully be called to answer at this bar. In itself it is manifestly co-extensive with the power to impeach. And, in that "all impeachments" are expressly included in the grant, it would seem to forbid that some who have committed impeachable crimes could, by their own act or the act of any earthly power, place themselves without the pale of this comprehensive declaration.

In addition to this grant of jurisdiction, the clause contains the general rule of practice in this court: the judgment it may pronounce and a limitation on the effect of that judgment. It will not be maintained that the second part which relates to the rule of practice limits the generality of the grant. If any limitation is therein contained, it must be found either in that which relates to the judgment or in the limitation on the effect of that judgment. Does this language, "Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States," limit the general jurisdiction contained in the first part of the clause which includes "*all impeachments?*" To effect this result it must operate as an exception out of the previously-granted power, in that its provisions are so contradictory that both cannot stand together.

It is not contradictory of the extent of the grant so as to forbid the impeachment of one who at the time of trial or judgment held no office, as it only fixes the utmost limit to which the punishment may extend. It does not require that the criminal shall be removed from office, but, if the circumstances and criminality justify, the judgment may include a removal from office. If he be not in office that portion of the judgment cannot be inflicted, but still whatever judgment the circumstances warrant, not exceeding full disqualification, may be imposed. He may be reprimanded; he may be disqualified to hold a judicial office, or a military office only, or all offices, as may seem just. This clause finds a striking parallel in most of the penal statutes, which empower courts to impose a penalty of fine or imprisonment not beyond a given limit, or both, or either, in which case any part of the penalty may be inflicted.

Under a similar constitutional power the senate of Pennsylvania, in the trial of Judge Addison, who had been impeached for an impeachable crime in the discharge of a judicial office, sentenced him only that he should not exercise under the Commonwealth of Pennsylvania a judicial office during the term of his life. A strong and very convincing argument was made in that case that the sentence need not and should not go so far, but should only extend under the circumstances of the case to mere reprimand; and it seemed to be conceded that under this clause a mere reprimand might have been given,

and nothing further. So there are any number of punishments that may be inflicted upon a defendant independently of that of removal from office, still coming under the clause of disqualification to hold an office.

And herein I would also notice this distinction, that the power to disqualify from holding office does not, *per se*, involve the necessity to remove from office, because your sentence may not be that he shall be disqualified from holding the particular office he is then enjoying; but he may be disqualified from holding some other office, or some other sentence that the court may see proper to inflict. That, then, is not a correct construction of this clause of the Constitution which says that disqualification necessarily involves removal from office, because you need not give full disqualification, but only partial, as your judgment. It is hence relieved from that notice taken by Judge Story and to some extent conceded by others in their discussions of this question.

Hence it does not seem to contravene the general grant of power. The last part of this clause, which says, "but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law," only guards against the pleading of this *official punishment* for *official or impeachable* crime as a defense in the courts of law, and has no significance as a limitation of the power of the court of impeachment.

The only remaining provision in the Constitution which requires consideration in this stage of the inquiry is the fourth section of the second article, which is:

> The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Prior to the introduction of this section, the power of this court had been declared to include "*all impeachments.*" The mode of practice had been in a general way established; its judgment had received its limitations and qualifications; the subject of the tribunal for impeachment had been fully considered and finished. The second article, which embraces the executive department of the Government, was then taken up. The subject under consideration in this article in the minds of the constituent delegates did not include the jurisdiction of any court. They were providing a mode by which the several officers included in this department of the Government they then had under consideration, in case their longer continuance in office should endanger the Republic, should be removed. If this section were intended as a definition of the powers of the court of impeachment, either as to the persons on whom these powers should be exercised or the crimes of which it should take cognizance, the location is truly remarkable. The naturalist would not be more surprised to find the orange or palmetto-tree growing in full luxuriance in Greenland than the constitutional commentator would be to find a section with such an object among the powers and duties of the Executive. It is truly thus located a rare exotic. Judge Story remarks:

> By some strange inadvertence this part of the Constitution has been taken from its natural connection, and with no great propriety arranged under the head which embraces the organization and rights and duties of the executive department.—*Story's Commentaries*, volume 1, section 788.

We maintain that there is no mislocation; it is not thrown out of its regular order. The character of those who gave language to this voice of the people, the Constitution, was so high, that it can scarcely be conceived that they would be guilty of so illogical a thing as to finish a court of impeachment, then step clear out of the judiciary, step outside of the duties of the Senate, step outside of the duties of the court, and then distinctly in a separate clause define the powers of a court which they had already fully defined; because we maintain that impeachment itself is a complete definition of those powers, and a definition that in itself is amply sufficient for a limitation of jurisdiction and for the conferring of the ample powers of the grant.

Such a mislocation of this section is not conclusive that it is not a new jurisdictional clause, but is sufficient to excite inquiry and suggest a doubt. To sustain the plea to the jurisdiction in this case, this clause must be construed—

First. To limit the grant of power to try "all impeachments" to impeachments against civil officers; and to this I would call your special attention, because that is all we propose to discuss especially.

Second. To such civil officers as shall at the date of and during the trial choose to continue in office and abide the judgment of the court. I say "during the trial," because if it be true that the removal from office is the reason why this is a jurisdictional grant, the person impeached might, after you had gone through all the formalities of trial, then resign and bid you defiance and say, "You cannot remove me from office; having no power to execute, you have no power to judge." As we progress further in the argument, we shall show that this is in opposition to every recognized principle of law that has ever been adopted in other judicatures.

Third. To change that clause of section 3 of article 1 so that instead of leaving a discretion in the court as to the extent of the punishment, it will require that in all cases of impeachments, on conviction the defendant impeached must be removed from office. To this I would call your attention also, that the clause which conferred the power upon the court clearly intended that there should be a discretion in this court, at least in some cases; and if there is a discretion in some cases to be left to this court, this clause cannot be a definition of the power of impeachment.

Another assumption must follow, that all impeachments should be limited to "treason, bribery, and other high crimes and misdemeanors," or all the prior assumptions are vain; for if judgment of removal from office be not such a necessary and indispensable part of the judgment as to oust the jurisdiction of the court in case it cannot be rendered, still this section would leave the defendant liable to trial and judgment by this tribunal. None of these postulates would be granted; but, on the contrary, the better reason would as to each, it is claimed, on careful examination be found to be in the negative. But to enter fully into the discussion of each would require a more full treatise on the subject of parliamentary impeachment than either the time or the necessities of this trial would permit or require. Hence, except as they may incidentally occur in the consideration of the second, no further notice will formally be taken of any of them.

The defendant was a civil officer of the United States at the time of the commission of all the alleged crimes charged in the articles. If his case be not included in the general jurisdictional clause granting the Senate power to try all impeachments, it must be because this section is to operate as an exception out of the general power, in that he is not now an officer of the United States, or as a proviso qualifying it in such a way that it should be construed to read, "the Senate shall have power to try all impeachments, *provided* at the time of trial the accused shall continue in office," or it must be a particular clause repugnant to the generality of the grant. It need not be considered whether it be an exception or proviso, as its collocation forbids such a construction.

The only debatable ground is the question whether this clause is repugnant to the general grant. The first power is that which is placed in the House of Representatives, which shall have "the sole power of impeachment." This clause leaves it discretionary with the House whether all impeachments shall be prosecuted or not, implying, if the offense be trivial, the offender insignificant, or the crime of rare occurrence, the discretion will not be exercised. On the other hand, if the offense be heinous, the offender conspicuous, and the crime common and polluting to the administration of government, this tribunal shall be invoked to restore safety and purity.

The word "sole" forbids any private person to start the machinery of impeachment and denies to all the world the right to legally dispute the propriety of the prosecution, if an impeachable crime has been committed, after the House shall have determined upon instituting proceedings.

I should call your attention to this: that as the people have seen proper to confer upon the House of Representatives the right to prosecute impeachments, and as that power must be conferred upon somebody, they have assumed that the House will not exercise this discretionary power except when the emergencies of governmental safety shall require it, so that the Senate need not inquire, nor have they a right to inquire, whether the House will exercise this power improvidently or thoughtlessly. When the House has made up its mind that a crime is of a terrible character, the people have said you have the right to judge whether it shall be prosecuted or not. The House may, I maintain, prosecute a common custom-house officer when it sees proper; but if it see proper to prosecute even the lowest of the officers of the Government, and conceives that it is its duty so to do, it exercises its constitutional rights, and it is the duty of the Senate to try it; but it is not probable, and the people so thought when they gave this power of attorney, the Constitution, to their Representatives, that it would not be exercised unless it were necessary to subserve the general good of the Republic.

So that this discretion is in the House whether they will prosecute or not; and the learned counsel need give himself no trouble as to the probability of your ever being called upon to try offenses committed by forty millions of people, because the House of Representatives will eliminate from the forty million all that the general safety and general welfare of the Republic do not demand ought to be prosecuted. But we do not maintain—and I wish now to state it lest I may be misunderstood from what I have now said—that we have any right to prosecute any other than official crime. The House of Representatives cannot prosecute a private citizen who has not been guilty of official crime. It is not included in the powers of impeachment in England or elsewhere. I shall consider this further, however, as we proceed in the argument.

The second grant of the people is "The Senate shall have the sole power to try all impeachments." In consequence of the infrequent use of this power its definition is at first glance uncertain. If the term "murders" or "all prosecutions for murder" were substituted for the word "impeachments," so that the clause should read "to try all murders" or "to try all prosecutions for murder," it would take a very distinctly-expressed repugnant clause to divest the jurisdiction of the court. Then if the word "impeachments" had a meaning to the framers of the Constitution as definite as "murder," or if it had any meaning whatever, that word indicated must require a no less distinctly-expressed repugnant clause to divest this court of the right to adjudge it. And here in the language of Professor Dwight, which is found in 6 American Law Register, New Series, page 257:

> The Constitution refers to impeachment without defining it. It assumes its existence, and silently points to English precedents for knowledge of detail. We are reminded of the statement that the Constitution is an instrument of enumeration, and not definition.

The Constitution then has named the power, assuming that the sig-

nification of that name was known. The language is that of English parliamentary law; and whatever it then signified the framers of the Constitution meant it should signify here; otherwise it is meaningless, and the whole grant an inanity.

Impeachment, like the common law, was a work of time. At first but indistinctly limned out, but little by little, with each recurring case, its characteristics were developed until finally in the Constitution of our country it stands forth with fully-delineated features. Of German origin, there the accusing and adjudicating tribunals were one and the same, but then, although in the constitution of the tribunal the maxim which forbids the prosecutor to be the judge was violated, the crime to be punished was official crime, visited with civil and official punishments. Imported into England, the prosecuting and judging tribunals were separated. The Commons prosecuted; the Peers judged. This was one step toward the perfection of the proceeding. There, as in Germany, the crimes impeachable were official crimes, and the punishment was alike civil and official, as in Germany. By the judgment of the high court of impeachment the officer was often deprived of his office and politically disqualified. But the citizen, too, by the same judgment in the same case, was often deprived of his life or his property. The punishment of the officer and citizen was merged in one heterogeneous sentence. As the English constitution improved on the German by separating the prosecuting from the judging tribunal, so the Constitution of the United States improved on that of England by separating the conviction and the punishment of the officer from that of the citizen. By the Constitution the officer is to be judged by one tribunal for his official crime. He is to be judged by another as a man or citizen. By one tribunal he is sentenced for his official crime, a sentence that operates on him only as an officer; by the other he is sentenced as the citizen by the deprivation of some of his personal rights. The sentence of one tribunal may be removal from office and disqualification to hold any office under the Government, which amounts to official death, or any other official punishment of inferior degree. In the other he may be sentenced to physical death, or any other usual personal punishment of inferior degree. The one tribunal deals with the officer as an officer, and on conviction inflicts an official punishment; the other deals with the offender as a citizen, and on conviction imposes a personal punishment.

This separation between the officer and the citizen is that which now perfects the jurisdiction of this court and fully defines what ought to be the power of a court of impeachment. It treats the two subjects as though they were different men: the officer as one man, the citizen as another. Although it may be the same individual that commits the two crimes, yet he is adjudged for each crime in its own appropriate tribunal. Hence our system has perfected that which was born in Germany, matured partially in England, and completely consummated here.

This brief *résumé* leads to the definition of impeachment as used in the Constitution as the parliamentary prosecution of official crimes. No formal definition perhaps has been announced. But with this view no work within our reach has been found to disagree. Impeachable crimes, as administered in courts of impeachment, have always been official crimes.

On this subject I wish to call your attention to a complete review of the authorities. I have not made it here, because it would be a work of days, and it would be trespassing upon your time more than would be justified. But if you go over the cases cited in Comyns's Digest, Bacon's Abridgment, or any other work treating of the subject of impeachment, you will find that there is no case in which the crime was not official crime. The case that comes nearest contravening this definition is that of Doctor Sacheverell, a parson of the English Church, who was prosecuted for preaching a seditious sermon. Here at the first blush it might seem as though it was a private citizen who was prosecuted. But when you go back to the facts of the case, this state of facts exists. In England there is an established church; he was a minister or parson of this church, officiating ministerially, and under the established church. At first advowsons, as you will all recollect, were presentative, collative, and donative. Donative are those which are held by the king in his own person. An advowson, "the right of presentation to ecclesiastical benefices." The king appoints in all donative advowsons either himself or a subject to whom he has granted the franchise to appoint in his stead. Justice Blackstone says that in the first instance all were donative; those that are not now donative, that are presentative or collative, have become so through time, but they all trace back to the great fountain of office and honor, the king. He commissions. They are really officers of the Government; they are really discharging duties under the laws of that government, commissioned by the king, directly or indirectly receiving their emoluments and pay from the government. Hence that case, which is the only one that can be found that appears in any way to contravene the general definition is not in collision with that definition, but rather in support of it.

But I may say here that a sporadic case can be found in opposition to almost every principle on earth; and he who is so omnivorous as to take down everything that comes before him must inevitably have much food that is difficult of digestion. Even if a single case were found which differed from this definition, it would not break down the great principle running through hundreds of years.

Then, if official crime was always that which was prosecuted by impeachment, as understood by our fathers, it covers the Blount case in this: The Blount case decided that it must be an officer of the United States who was impeached. The very definition of impeachment says it must be an officer of the United States, because an officer of a State as to the United States is a mere citizen, and you cannot impeach a citizen in any court of impeachment. So that this definition of impeachment, which will be found to be consistent with as I believe every decided case, and if it be not with every case, the case that does not conform to it is exceptional, we say it completely embraces the Blount case without calling into requisition anything from the fourth section of the third article of the Constitution with reference to it.

In Rawle on the Constitution it is asserted:

> In general those offenses which may be committed equally by private persons or public officers are not the subjects of impeachment.

That is the way our ancestors understood it, that an offense which could be committed only by an officer was all that was the subject of impeachment. This statement Judge Story cites with approval, as found in 1 Story, section 801.

I made inquiry also of Mr. Spofford, the Congressional Librarian, and on research he states to me that he found no case that did not come within the statement that officers only were prosecuted, and his researches, as you all know, are usually exhaustive and complete. Hence I will assume that this is the definition of what impeachment means, official crime *per se*; and the Constitution, when it says the Senate shall have the power to try all impeachments, says this Senate shall have power to try all cases of official crime; the House of Representatives, it is to be remembered, is the power to prosecute, the House having a discretion whether they will call all official crime before you or not.

I wish also to cite from Blount's case as an authority to show that in that case this view was asserted and not denied; that is, that the definition of impeachment itself meant official crime. On page 2266 of the volume of the Annals of Congress containing that trial, I read from the argument of Mr. Dallas—and here I may say that Wooddeson himself, by not considering the force of what Justice Blackstone had said, left the impression that commoners as commoners, not in office, were subject to impeachment, and that is commented on by Mr. Dallas in his argument. He says:

Speaking of Wooddeson's lectures—

> That all the king's subjects are impeachable in Parliament; but with this distinction, that a peer may be so accused before his peers of any crime, a commoner (though perhaps it was formerly otherwise) can now be charged with misdemeanors only, not with any capital offense." This position, however, must be understood in coincidence with the general policy previously stated; and then all subjects are impeachable, because all subjects may be magistrates and public officers. The instances specified in Wooddeson are all of an official nature; and no other description of impeachment by the Commons can be traced in the English books.

So that Mr. Dallas has made the same investigation apparently that I have with reference to this subject, and came to the conclusion, after examining the authorities cited by Mr. Wooddeson and the several digests, and found that the very word "impeachment" itself defined that it included nothing but official crime.

The Constitution recognizes two characters of crime as distinct; those committed by an officer in his official relation, to which an official punishment as a penalty is affixed; the other, individual crime by the citizen, of which a personal punishment is the incident; and although the officer and the citizen may be one, and he may commit two crimes, the official and personal, by one act he cannot in the same tribunal receive punishment for both, but if both are to be punished, the operation of two different tribunals must be invoked. The official crime, as such, cannot be punished in the ordinary courts of law. Then if the official crime is not to pass unpunished, it must be punished by this court. To justify the conclusion that a character of crime that strikes at the foundation of civil government is by a subsequent repugnant clause in the greater number of instances placed beyond the reach of the powers of the only court by which it can be punished, is scarcely to be credited. If to this be added the fact that such a conclusion must always leave it to the option of the criminal whether he will be punished or not, requires a larger development of credulity than the most of mankind can ever be expected to possess.

Now, is there such a repugnancy between this clause and the general grant which went before as to call for this superabundant credulity? If this section be considered in the view that it has some jurisdictional power or effect more than merely to require upon the commission of a given character of impeachable offense by a certain class of officers and conviction therefor a fixed punishment must be inflicted, which is the view most favorable to the defendant, then it must be claimed a repugnancy arises from the fact that the criminal must be a civil officer of the United States. This is not repugnant to the general grant, as it is only one who is or was an officer of the United States who could commit an impeachable crime, as the offense must be official. In this we join hands with the honorable counsel and say that he must be an officer of the United States. But the material question arises after this, When must he be an officer of the United States? At the time he committed the crime, or at the time he is convicted?

Unless this question is to be answered in opposition to all the course of procedure in criminal law, it is the locality or status of the crim-

inal at the commission of the crime that establishes alike his guilt and the jurisdiction to which he should be held amenable.

If this clause of the Constitution may be viewed in three different aspects, the aspect that he might be impeached after election for an offense committed before he went into office would fill all that has been discussed by the counsel for the defendant. That is, a man might commit treason to-day, he might commit bribery to-day, he might have received a presidential pardon therefor, and four years from this time he might be elected to office; and, if his being in office and conviction of treason and bribery, according to the limitations they propose to use this article for, were the terms that defined the impeaching power, he could, for that bribery for which he had been pardoned, still be impeached and removed from office. This is not true. There is some time at which it means he shall be an officer. It does not mean that he shall always have been an officer, but it means some specific time, and we maintain that that specific time, in accordance with every precedent in criminal law, is the time at which the offense was committed. It is the locality or status of the criminal at the commission of the crime that establishes alike his guilt and the jurisdiction to which he shall be amenable.

If the crime be committed in one county or district and after the deed is done the criminal escapes into another county, the jurisdiction of the court where the crime is committed is never questioned. An illustration was used by one of the defendant's counsel to show that they could step out of the jurisdiction of a criminal court. He called to his assistance the fragile fabric of civil cases to illustrate this criminal one. I take the ground now distinctly that this is a criminal case; that removal from office and disqualification is a punishment; and, in support of this, the case of Cummings *vs.* State of Missouri, 4 Wallace, and *In re* Garland, in the same volume, fully corroborate me that it is a punishment; and we think that this is conformable to the doctrine asserted on impeachments heretofore.

If a statute declare that certain acts of a cashier of a bank or other trustee shall constitute embezzlement, it would never for a moment be entertained that the criminal by resigning the office of cashier or trustee could thereby escape the punishment for his crime by pleading that at the time of information or trial had he was not cashier or trustee, and therefore was not covered by the provisions of the penal statute. All the statutes with reference to that subject speak of the crime, that if the cashier did so and so, or if the trustee did so and so, he shall suffer such and such punishment. Should not this case receive the same construction? Substitute for cashier or trustee the case of a President committing treason, bribery, &c., and what interpretation would you give it? You would say it did not mean he must be President at the time of trial. You would say that it does not mean he must be President at the time of conviction or at the time of sentence. But you would say it means he must be President at the time he did this wrong. As to the illustration proposed by defendant's counsel, if General Jackson were living at the Hermitage to-day and the House should see proper to impeach him for some removal of the deposits from banks while he was President would you have authority to try? I say if he committed the crime while in office and the House of Representatives of the United States, endowed as they are with the right to judge whether he shall be impeached or not, say he should be impeached you have the power to try him, whether it was General Jackson or no matter who it was.

There is no limitation to crime except that by express statutory enactment. Limitations to crime are made by statute, and not by inferences. At the common law, if a servant killed his master or a wife her husband, it was petit treason. If a servant should plead that the deceased, at the time of information made or at the time of verdict rendered, was not his master, that would be the truth; still the court would reply, as we reply to this defendant, "You were his servant at the time of the commission of the crime, and your condition at the time you did the deed is that which fixes your guilt or innocence." Almost every penal statute for the punishment of crimes by an officer speaks of the subject of the statute as an officer of the United States; yet it never occurred that it at all implied that the criminal should, at the time information was made against him, be an officer of the United States. He may have resigned, but the stain of his crime remains.

This we will illustrate by the very case under discussion. Allow me to call your attention for a minute to the very statute under which in a criminal court this defendant would have to be brought to the bar, (section 1781, Revised Statutes.) If a court should give the same construction to the statute which the counsel for the defendant ask you to give to the Constitution of the United States, they would have to refuse jurisdiction, for it speaks of him as an officer of the United States. Take section 1781:

> Every member of Congress or any officer or agent of the Government who directly or indirectly takes, receives, or agrees to receive any money, property, &c.—

Going on and giving the limit of the punishment. The language is—

> Every member of Congress or any officer or chief of any Department of the Government.

Their plea to the court of the District of Columbia would be, "I am not an officer of the United States, as that statute says. Not being an officer of the United States, can you prosecute me? Have I not made out a full and complete case?" Senators, how can you say that the Constitution, using identically the same language that is used in every statute relating to the same subject-matter, shall receive a different construction from that which every court under all circumstances has given to such statutes? We maintain that there is not even plausible color for such an argument as that. If you yourselves should appear in any court of criminal jurisdiction with such a plea, it occurs to me that you would feel that you were disgraced in your professional character.

Then that portion of the section, "the President, Vice-President, and all civil officers of the United States, shall," &c., by the ordinary rules of construction signifies that the time when the accused was required to be an officer of the United States is at the time of committing the crime.

I refer to the case of Lord George Sackville, who at the battle of Minden commanded the British forces under Prince Ferdinand, who for disobedience to the command of his superior officer or cowardice fell into disgrace. In September, 1759, he resigned. His resignation was accepted immediately, and he was dismissed from all official employment. In February, 1760, a court-martial was called to try him. The question was submitted to the twelve judges of England whether a citizen could be subjected to a court-martial. The judges responded that he could. After full consideration they decided him subject to the judgment of that tribunal, notwithstanding his resignation. He was accordingly tried by court-martial and convicted.

On this same subject I will call the attention of the Senate for a moment to Scott on Military Law. With this authority one of the honorable counsel for the defendant must be very familiar, for he delivered an opinion upon it, I see at the foot of the page. But I shall not quote his opinion as an estoppel. Estoppel seems to be the favorite doctrine of the counsel for the defendant. I will not ask that he shall be estopped by it, but I will ask if it is the truth you shall accept it.

Section 630 is as follows:

> No person shall be liable to be tried and punished by a general court-martial for any offense which shall appear to have been committed more than two years before the issuing of the order for such trial, unless the person, by reason of having absented himself, or some other manifest impediment, shall not have been amenable to justice within that period.

I now read from the note:

> In the only instances in which this phase of the question of jurisdiction has been passed upon by the civil courts of our own country, it has been affirmed that the jurisdiction of courts-martial comprehended all offenses committed while the offender is subject to the Rules and Articles of War, whether he had or had not continued in the military service.

That is, all offenses committed while he was subject to the Articles of War, whether at the time of trial he had or had not continued in the military service.

Mr. Cushing at one time delivered an opinion that he could not be tried; that whenever he went out of service the power of the court-martial to try him was gone; that its jurisdiction was divested. In consequence of this opinion of Caleb Cushing, an express statutory enactment was made to repudiate that doctrine as found in a section in the same work. I have not the sections rightly numbered, and, as it will take me too long to find it, I will not read the section enacted for the purpose of avoiding the opinion given by Mr. Cushing. This is Mr. Cushing's opinion:

> Attorney-General Wirt was of opinion that soldiers discharged in consequence of the re-organization of 1821 were no longer subject to military law, at least for the completion of a punishment which in its character looks to their restoration to the military service when the punishment shall be over, as sentences to confinement, hard labor, &c. There is color for the opposite opinion, but I hold this to be the safest and soundest on the law as it stands.

Judge Black, while Attorney-General, delivered the following opinion:

> It is by no means clear that this circumstance [the dismissal of the officer whose case was then under advisement] placed him beyond the jurisdiction of a court-martial.

He remarked also that—

> In England the jurisdiction of a court-martial under such circumstances was unanimously sustained by the twelve judges in the case of Lord George Sackville, and their decision is recognized as the law by Tyler, page 113, in Griffith's Notes, page 32, and in other respectable works on military law and courts-martial.

This point was incidental only to the question before Mr. Black, and he explained that its introduction—

> Was not for the purpose of pronouncing an opinion upon it, but to avoid misconception, because silence would have been regarded as an admission that the jurisdiction of a court-martial expires with the soldier's term of service.

Section 1070 of Scott's Military Law reads as follows:

> This article of war—

Section 630, which I have read—

is a statute of limitations in case of proceedings to punish persons for offenses "arising in the land forces." As at present advised, I do not see what provision of the Constitution, or statute, or principle of common law can be invoked to prevent the arrest and trial of a person by court-martial for a military offense committed while such person was an officer or soldier of the Army of the United States *after*—

Italicized—

after the expiration of the term of service, so that the order for the trial is issued within the time limited by the Article of War.

That is, within two years.

> And so in principle it seems to have been held in the case of Lord George Sackville, as reported by Tyler in his treatise on courts-martial.

1071. In that case it appeared that, as the defendant had been dismissed from His Majesty's service previously to the prosecution against him, it was doubted under the mutiny act whether he was subject to the jurisdiction of the court; upon which that question was referred to the twelve judges, who certified that under the circumstances of the case they saw no reason to doubt the jurisdiction of the court-martial.

1072. *In re* William Walker, decided by Mr. Justice Wilde, of the supreme court of Massachusetts, and after consultation with and with the concurrence of his brother judges, and reported in American Jurist, April number, 1830, it was held that a seaman who had committed a naval offense, and had been arrested therefor on the day preceding the expiration of his term of his service, might be detained for trial and punishment after the expiration of such term. In the course of the opinion the learned judge cites the case of Sackville, cited *supra*, with approval; and upon the general question says:

"It is true that a seaman is not bound to do service after the term of his enlistment. But within that term he is bound to observe the rules and regulations provided for the government of the Navy, and is punishable for all crimes and offenses committed in violation of them during his term of service. There is no limitation of time within which he is to be prosecuted and tried for such offenses, but if there were it would be sufficient to show that the prosecution was commenced within the time of limitation."

In corroboration of this view, I suggest the principle that when any one enters upon an office he is not relieved from all the duties and responsibilities of that office, civil and criminal, until they are fully discharged.

The punishment by impeachment is an incident of a civil office, and he can no more throw off his responsibility criminally than he could throw off his responsibility civilly to account for the moneys that came to his hands. His official duties are not consummated until after he shall have performed all and subjected himself to every requirement of the law under which he went into office.

Therefore, it seems to me there is not even color for saying that this man is now out of office for the purpose of this prosecution, because he has not fulfilled all his responsibilities nor discharged all his duties. If he had retained some money that might have come to his hands, for which he was by law accountable, would his resignation discharge him from his obligation to account for it? Not for a moment. If he has violated duties more sacred than that, will his resignation discharge him? It does not seem to me that such an allegation conforms to reason

The case of a discharged soldier seems a case much stronger than the present, as the courts-martial, with their judgments and sentences, are limited in jurisdiction, obnoxious to the common law, and always watched with suspicious vigilance. If a court-martial, whose jurisdiction is limited to the soldiery, a jurisdiction which we as freemen have always been taught to regard with the utmost vigilance and against which we would give the strictest construction, would not say that they could not take cognizance of a crime committed by a soldier when he was not in the Army because he was discharged, can this court of impeachment acting as the representative of thirty-seven sovereign States? I would not say that you will give a different construction to that power of attorney, the Constitution of the United States, by which the people have authorized you to act. It is a question that ought to be decided, and ought to be decided in favor of that which requires the highest degree of care, and imposes upon the officer the fullest responsibility that he assumed at the time he entered on the duties of his office. The status of the criminal when he commits the crime is the plane on which he is to be judged.

The next ground on which it may be claimed that this clause is repugnant to the general grant of jurisdiction is that all civil officers who are convicted on impeachment of treason, bribery, or high crimes and misdemeanors should be removed from office. From this it is argued if the court, from the condition of the criminal, cannot inflict the whole punishment prescribed by law, it has no jurisdiction and cannot inflict any portion of it. Such a statement in the ordinary courts of justice would meet with little favor. In larceny, the judgment usually prescribed is that the goods be returned with fine and imprisonment. If the criminal was likely to be prosecuted he could go back and restore the goods, and if this principle should hold, plead that the whole sentence which he had the lawful right to receive could not be inflicted, and therefore he would not submit to any trial or punishment. The panper who should commit a crime which would entitle him to fine and imprisonment would plead his insolvency and divest the jurisdiction of the court. The felon who for some previous crime had been imprisoned for a limited time in those States in which murder in the first degree is punished with imprisonment for life might with impunity murder his jailer or any of his fellow-prisoners with whom he might be brought in contact, and when called to the criminal bar plead to the jurisdiction of the court that they could not imprison him for life in that he was now under a sentence for a part thereof, and as he could not receive from the hands of the court his full and just deserts he must have the right to claim exemption from trial and judgment.

This mode of reasoning is treating the punishment as a right of the criminal, instead of his ignominy, his punishment. The criminal cannot assign as error that the judgment was more favorable to him than the case required. (4 Blackstone, page 395.) Then it is not for this defendant to complain if his punishment in case of conviction is not commensurate with his deserts.

I may state here as a general principle that the fact that a court has not power to enforce its judgments is never a ground on which you can divest jurisdiction. If it were, what would be the condition of our civil courts now? In one-half or one-third of all the judgments they render, to use a common phrase, they get beaten in the execution; they cannot enforce their judgment. They put out their execution; but they cannot collect the money And say this defendant's counsel: "If you cannot enforce your sentence, you have no jurisdiction; you cannot give a judgment." You cannot argue from the want of bility of the court to carry out that which it decides that it has no jurisdiction to decide. It has never been admitted, and never will be, I think. In the case of Rhode Island *vs.* Massachusetts a bill was filed by the solicitor of Rhode Island in the Supreme Court of the United States to settle the boundary between the State of Massachusetts and the State of Rhode Island, and this very plea was interposed that the court could not enforce its sentence; "how will you issue an execution or issue any mandate to a sovereign State saying you shall abide by this boundary or this judgment which we shall render?" The Supreme Court, after considering it fully, and after it had been argued by the first lawyer of the nation at that time, decided they had jurisdiction. Because they could not carry out their decree could not prevent the court from rendering a judgment that would be binding. It does not follow that the court cannot enter into a case for want of jurisdiction. The personal inability of a defendant to receive and suffer the full sentence of a court cannot be interposed as a ground why the jurisdiction of the court shall not be sustained. That was well illustrated by my colleague yesterday [Mr. KNOTT] concerning the benefit of clergy. Because the thumb cannot be burned, therefore there can be no judgment by the court, and therefore the jurisdiction of the tribunal would be ousted! Can you sustain such a view as that in this tribunal?

Mr. LOGAN. Mr. President, before the manager leaves that part of the case which he was discussing under the Articles of War relative to courts-martial, I have a question to propound.

The PRESIDENT *pro tempore*. The Secretary will read the inquiry propounded by the Senator from Illinois.

The Chief Clerk read as follows:

Article 61 of the Articles of War provides that any officer who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service. In a case where an officer of the Army should be tried under this article of war, after becoming a private citizen, what would be the judgment of the court-martial?

Mr. Manager JENKS. The judgment would be nothing, as it was in the case of Rhode Island *vs.* Massachusetts. It does not divest the power of the court to try; it does not say that the court is powerless because the defendant is incapable to receive sentence. This is the want of capacity of the defendant, and not of the court; and a plea to the jurisdiction must be to the court, and not to the defendant. The plea on the part of the defendant of his incapacity must be to the court, and not to the defendant. A plea on the part of the defendant of his incapacity must be put in bar. For instance, a criminal court cannot convict an insane person; but suppose one who is insane had committed a murder and he came into court under proper process, would the attorney for that insane man plead "the court has no jurisdiction," or would he plead the incapacity of the defendant? If they change their plea, and say "we are incapable," then that question would be pertinent; but this is a question of jurisdiction as to the court, and not of capacity as to the defendant. We say he may be as incapable as can be, but that does not affect your power; it does not affect this question; so that you cannot reason at all, from the fact that the defendant cannot comply with the sentence of any court or that you cannot put any penalty upon him, that you are powerless. It is he that is impotent, not the court.

My colleague [Mr. HOAR] also suggests (but the answer I have given I believe is the legal answer) that that is a case where the whole penalty is removal from the service. It would then come within the jurisdiction of the House of Representatives to judge—that is their discretionary power—whether they would impeach or not. It would not be a question for the Senate, but a question of propriety on the part of the House, whether they would impeach; and, after they have passed upon the propriety of that, whether you can render a judgment or not is immaterial if you have power to try.

I would also call your attention very briefly a little further to this view of the case, that the personal incapacity of a defendant never divests the jurisdiction of a court. On that point I would refer to an authority not altogether unfamiliar, I apprehend, Blackstone's Commentaries. Treating of this subject concerning those who after judgment cannot receive sentence, he says:

Another cause of regular reprieve is if the offender becomes *non compos* between the judgment and the award of execution; for regularly, as was formerly observed, though a man be *compos* when he commits a capital crime, yet, if he becomes *non compos* after, he shall not be indicted; if after indictment, he shall not be convicted; if after conviction, he shall not receive judgment; if after judgment, he shall not be ordered for execution; for *furiosus solo furore punitur*, and the law, knows not but he might have offered some reason, if in his senses, to have stayed these respective proceedings. It is therefore an invariable rule, when any time intervenes between the attainder and the award of execution, to demand of the prisoner what he hath to allege why execution should not be awarded against him; and if he appears to be insane the judge in his discretion may and ought to reprieve him. (Blackstone's Commentaries, Book 4, chapter 31, pages 395, 396.)

That is, it amounts to a suspension of judgment. Suppose this defendant, after the prosecution had been instituted, had resigned; if the want of power to inflict the sentence is a question which is addressed to the jurisdiction of the court, then he could come in and plead that you cannot judge this case, and you would have to stop right there. Then, if he should be appointed to office again, what would be the result? It would then just come in the same position of an in-

sane man; you would proceed with the judgment; and, if the removal must divest your power to pass any sentence and take away from you the right to disqualify, (which we maintain it does not by any logical view of the case,) all you could do would be simply to find the truth, and reserve your judgment, as the court would in a case of insanity, until he should be competent to receive the judgment.

But let us take another view of this case. Suppose a man had been found guilty of murder, and he had been sentenced, and the day for execution had been fixed, and in order to avoid that execution he should drink himself into a state of maudlin insanity, and then, as you could not inflict punishment upon one insane, he would insist that you could not proceed with your execution. This would apply in this defendant's case. He himself, by his own act, has rendered himself incompetent, if he is rendered incompetent, and he cannot plead that more than a man who drank himself drunk to prevent execution could prevent execution thereby. Wherever it is the fault of the defendant himself that he is disqualified, although he may be maudlin and really insane, yet he must suffer the punishment of the law when that weakness or incapacity is artificial, made by himself. So this defendant, if he comes in after you have granted him a reprieve, and says, "I have resigned for the purpose of dodging your jurisdiction," you would say, as the executioner would say, "No man can take advantage of his own default to clear himself from the result of his demerits."

But this may be viewed in another aspect. If the reason why this court has not jurisdiction is that the judgment of removal from office cannot be rendered, then if he were re-appointed he would be within the reach of that portion of the judgment; the reason would cease to exist and he would be subject to impeachment. The court of impeachment would have jurisdiction every time he might be re-appointed, but that jurisdiction would be divested as often as he might resign; and if it is only because the judgment of removal cannot be rendered that the jurisdiction of the court is divested, the defendant need not resign till after the trial shall have been fully gone through with, all except the judgment. If he finds it is going against him he can resign, and, as a plea to the jurisdiction is never too late, he may plead it before the sentence, and the court, perhaps after weeks or months of laborious investigation, can only dissolve and make its best bow to the citizen of Iowa or elsewhere for having arrogated to itself the right to try a private citizen whom the House of Representatives of the United States had been so presumptuous as to arraign at its bar. After the court should have dissolved and the House of Representatives had got fairly established at their legislative duties, the President, as some kind of compensation or atonement to this private citizen for the persecution to which he had been subjected, could re-appoint him to the same office; and, as often as the pertinacity of the people should demand a new prosecution, a new resignation and a new re-appointment could be gone through with and the very purpose of all the provisions of the Constitution with reference to impeachment be thwarted; and this, too, in the face of the constitutional provision which denies to the President the power of pardon in cases of impeachment.

This, with other similar considerations, leads us to conclude that the signification of this clause with reference to the subject of impeachment should not be construed as repugnant to the general grant to the Senate of power to try all impeachments, but simply signifies that if the criminal civil officer shall not before have been removed, the removal shall in all cases be inflicted as part of the sentence of the court.

Then to this grant in the Constitution which is general there is no proviso, no exception or repugnant clause within which the case under discussion comes. This view is corroborated by Mr. Rawle, who in his Commentaries on the Constitution, after discussing the persons who are liable to impeachment, concludes in the following language:

> From the reasons already given it is obvious that the only persons liable to impeachment are those who are or have been in public office. (Rawle on the Constitution, page 243.)

And this "have been" is not in parenthesis, as the honorable counsel for the defendant seemed to think it was. It is a distinct substantive part of the sentence, and the best-considered part of the sentence probably in the whole paragraph. Judge Story expressly leaves it an open question, dismissing its further consideration by saying of it and a cognate question—

> They are brought before the learned reader as matters still *sub judice*, the final decision of which may be reasonably left to the high tribunal constituting the court of impeachment when occasion will arise. (Story on the Constitution, § 805.)

In reference to Judge Story, the defendant's counsel have quoted that authority as corroborating the view that an officer is not impeachable after he shall have resigned. Such is clearly not what Judge Story meant. As in all the rest of his works, he presented the arguments *pro* and *con*, usually as they had been presented by others. If he had a distinctly formed opinion of his own, he announced it; if he had none, he left it open. If there had been a judicial investigation of the subject and it had passed under judgment, it was then announced. So Judge Story meant just what he said when he said it must be left to you, and you alone, to settle this question; and now it is for you to settle.

English precedent, whence the framers of the Constitution derived their opinions on the subject, are distinctly in favor of the court retaining its jurisdiction in this case. In the impeachment of Warren Hastings it appears that resolutions were passed for his recall from India as governor-general of Bengal, in consequence of which, on the 16th of June, 1785, he returned to London, and the first step toward his impeachment was not taken until the 17th of February, 1786, which was a motion made by Mr. Burke for a copy of the correspondence between him and the company from January, 1785, to January, 1786; and on the 4th day of April, 1786, articles of impeachment were by Mr. Burke presented to the House of Commons against Warren Hastings, *late* governor-general of Bengal, as "late Secretary of War" here. This case has a peculiar significance when it is remembered that it was so very recent as to be immediately in the presence of the framers of the Constitution—their daily reading at the very time they were engaged in their labor. In discussing the subject of impeachment, Colonel Mason expressly cited it to show the scope of the power of impeachment in England, as appears by the Madison Papers, volume 3, page 1528.

This case was immediately before the convention that framed the Constitution at the time they framed it, and when it was before them and it was a known fact that he was only a subject of England. If the convention had meant to say that it was not the status of the criminal at the time of committing the crime that fixed the jurisdiction, would they not have taken some pains to make the distinction between the English constitution and ours in regard to this subject? To me this seems a pregnant negative. If they had not meant that this very case which was then cited before them, was in their daily papers, should not be regarded as anything of a guide as to what impeachment meant, is it not singular that they never thought to guard this by an express clause that an officer could not be impeached after he had gone out of office?

On a prior day from the same authority we learn that the query with those who framed the Constitution was not, as it is with us, whether one who had been an officer but was out of office could be impeached, but the very reverse; whether it would be proper to impeach the President or Vice-President while in office.

In the Madison Papers, volume 2, page 1153, the following discussion occurred, as cited by the honorable counsel for the defendant. Allow me to read to you first the resolution, because you cannot derive the full signification of the motion unless you know the resolution on which it was founded, and in this resolution you will note the fact that it was only with reference to the President. There were no "civil officers" included in the clause, concerning which this motion was made, but only the President. It is article 9, as introduced by the committee:

> 9. *Resolved*, That a national executive be instituted, to consist of a single person, to be chosen by the national legislature for the term of seven years, with power to carry into execution the national laws, to appoint to offices in cases not otherwise provided for, to be ineligible a second time, and to be removable on impeachment and conviction of malpractices or neglect of duty.

This has reference only to the President. Mr. Pinckney and Gouverneur Morris made the following motion with reference to that resolution:

> Mr. Pinckney and Mr. Gouverneur Morris moved to strike out this part of the resolution:
>
> To be removable on impeachment and conviction of malpractice or neglect of duty.
>
> Mr. Pinckney observed, he ought not to be impeachable *while in office*.

Not while out of office, but he ought not to be impeachable *while in office*. The query with them was whether he should be impeachable only in office. Did not that in itself imply that he was to be impeachable when out of office? The clause conferring the general power of impeachment had gone before; but here it was proposed to impose a special penalty on the President who should be guilty of these particular crimes, "malpractice or neglect of duty." This clause alone referred to him; and then the motion was to strike out removal from office, because he ought not to be impeachable *while in office*, leaving him subject to the general jurisdiction which had gone before, that he should be impeachable at the discretion of the House. But the inquiry was should he be subject to punishment of *removal* and other disqualifications? Then Mr. Davie, in reply to this motion that the President ought not to be impeachable *while in office*, said:

> If he be not impeachable while in office he will spare no efforts or means whatever to get himself re-elected. He considered this as an essential security for the good behavior of the Executive.

What good would it do him to be re-elected if he could not be impeached anyway if he was out of office? If it meant, as the learned counsel suggested it did mean, that he should not be impeached after he had gone out of office, how would it be a harbor of safety for him to seek a re-election? This is what Mr. Davie said: "He would then spare no means to secure re-election" to avoid impeachment. He need not take that pains according to the learned counsel for the defendant, because when he had gone out of office he would become a citizen, and he would make his best bow to the tribunal and say, "You cannot impeach a citizen." So we say that the very reverse of what the counsel for the defendant has cited this for is what the framers of the Constitution meant.

> Mr. WILSON concurred in the necessity of making the Executive impeachable while in office.
>
> Mr. GOUVERNEUR MORRIS. He can do no criminal act without coadjutors, who may be punished. In case he should be re-elected, that will be a sufficient proof of his innocence. Besides, who is to impeach? Is the impeachment to suspend

his functions? If it is not, the mischief will go on. If it is, the impeachment will be nearly equivalent to a displacement, and will render the Executive dependent on those who are to impeach.

Colonel MASON. No point is of more importance than that the right of impeachment should be continued.

They were not discussing, as the learned counsel says, whether the right of impeachment should exist at all, but whether the President, speaking of him alone and no other civil officer, should be removed. The query was whether he ought to be impeached while in office or left until after he had gone out, as indicated by Mr. Mason:

Shall any man be above justice? Above all, shall that man be above it who can commit the most extensive injustice? When great crimes were committed, he was for punishing the principal as well as the coadjutors.

So that it seems to me that this authority, instead of sustaining the eccentric view of it taken by the learned counsel for the defendant, is the very reverse. After very elaborate discussion our ancestors concluded that a President might be impeachable while in office. During all that discussion on this very subject, it never occurred to any one to doubt the propriety of impeachment after the criminal had gone out of office. Had the learned counsel for the defendant been there with this plea and suggested that the President could not be impeached after he was out of office, how completely would the subject of impeachment have been exhausted. Mr. Pinckney would have denied the propriety of impeachment while in office. The learned counsel would have chimed in with the impropriety of impeaching the President after he had gone out of office. The result would have been pretty nearly what it would be now if resignation could be pleaded in bar of jurisdiction on impeachment. This subject of impeachment would have been completely eliminated from the Constitution.

Another case of impeachment in the English House of Lords occurred in 1806, which, as a precedent, from the facts on which it was founded, may afford some light on the question now to be decided. Viscount Melville was appointed to the office of treasurer of the navy on the 19th of August, 1782, in which he continued till the 10th of April, 1783. He was re-appointed on the 5th of January, 1784, and remained in office until the 1st of June, 1800. On the 8th of April, 1805, Mr. Whitbred introduced resolutions of censure and on the 9th moved in the House of Commons an address to the king praying his removal from the king's council. He had been transferred from treasurer of the navy to the king's council in the mean time. While this matter was under discussion Viscount Melville, on the 10th of April, resigned, just as this defendant resigned while this discussion was pending in the House of Representatives. The resignation was accepted the same day (as this was) and notice thereof officially communicated to the House of Commons on the 29th of May, 1805. Mr. Whitbred gave notice in the House of Commons of a motion for the impeachment of Lord Melville. In pursuance of this motion articles were drawn, including, among others, transactions that occurred in the first term of his incumbency of the office of treasurer of the navy; and, although at the time of trial he held no office in England and it had been twenty-two years since he had first laid down the office which he held at the time of the commission of some of the alleged crimes, the House of Peers took cognizance of the case and fully tried the defendant. At the time of trial twenty-four years had elapsed since some of the alleged criminal acts had been done.

This case would establish at the same time that resignation did not divest jurisdiction and that without an express statutory enactment official impeachable crime is without limitation as to the time of its prosecution. Once guilty, he is for life at the mercy of the impeaching tribunal.

The case of Judge Barnard has been cited by several of my colleagues and discussed somewhat at length. It is the only American precedent directly upon the question under consideration. As to that, it is only necessary to say that the court sustained the jurisdictional power of impeachment. The likeness between that and this is more than an analogy.

Blount's case has been cited by the learned counsel, and one of them asserted as a part of his discussion of this case that we must stand upon the same principle that was there asserted, that all persons are liable to impeachment; and it has been announced by the second counsel who spoke for the defendant that the question you were to decide was whether you had jurisdiction over forty million people. We take no such ground as that, but distinctly repudiate it, and say that our definition of impeachment, which we maintain is correct and derived from the whole series of adjudicated cases, confines this; that the jurisdiction of the Senate by the very naming of impeachment *per se* is confined to official crimes, and there are not forty million officers in the United States, although there is a considerable number of them. But you have jurisdiction of every criminal official offense, of every official crime which may be committed by an officer, and it is in the discretion of the House of Representatives whether they will prosecute all official crimes before you or not. It was anticipated, doubtless, by the framers of the Constitution that the House of Representatives would eliminate all cases from those within their discretionary power except such as from their character deserved judgment from this tribunal. So we do not stand upon that ground, but the very reverse; that no person can be impeached here who did not commit an official crime, and that no one who has not been an officer of the United States can commit an official crime.

The Senator is not an officer of the United States; the Congressman is not an officer of the United States. Why? In the formation of our Government three elements entered. There were the people, the States, and the General Government. The people are represented by the Congressmen; they receive their commissions directly from the people. They are the officers of the people of a State, and not of the United States. They may do official duty with reference to the United States, as some other State officers do now; but they are still officers of the State. The Senators represent the sovereignity of the several States; they represent the States, and as such are officers of the States, and not of the United States. So that a Senator is not impeachable in that he is not an officer of the United States. A Congressman is not impeachable in that he is not an officer of the United States but an officer of the people of a State.

It leaves it, then, that those cognizable before this court are only those who are the Government officers of the United States, who are officers alike for every State, who receive their powers alike from every State, directly or indirectly, who are commissioned by the people of all the States, or who are commissioned by some person representing the people of all the States. So that the officers of the United States are those included in the executive department of the Government, and every officer of that executive department we conceive to be impeachable before this tribunal.

Now, why should it be that a civil officer should be impeachable rather than a military officer? Is the one more dangerous than the other? Were the framers of the Constitution more careful to guard one than the other? No. They simply took this into consideration: This provision simply meant that it was imperative that on impeachment for certain crimes of a high grade, civil officers should be removed. Why not military officers? Because military talent is of a peculiar character. One man in an army may not represent only one man, but his name may be good for a thousand, ten thousand, or more. Suppose you take the case of the Duke of Marlborough—a man noted perhaps for his avarice—a man who, if he had been prosecuted for official malpractice under our Constitution, would have been removed from office had this power been extended to military officers as well as civil officers; but to remove the Duke of Marlborough from the head of the armies of England would have been equivalent to yielding her place as a military nation in the face of the world. So there is a reason why military officers should not be necessarily removed. You may remove them. If the demands of the Republic require you should remove them you should do it, but you are not compelled by the Constitution to do it. That is why it was made applicable to civil officers alone, and in reference to civil officers we have daily and hourly indications that if the very best of civil officers were to be removed, highest or lowest, abundance of people would spring up, numerous as the frogs of Egypt, fully competent and amply willing to fill the places. It was restricted as to military officers because of the character of the duties they have to perform; it was restricted as to naval officers for the same reason; and it was not, as I apprehend, for the cause suggested by Judge Story: that there were courts-martial to try their crimes.

The spirit of our institutions is that the people shall all the time hold their hand on every officer in the United States. As to those that were elected by themselves, Congressmen, they placed it in the power of Congress to remove them. As to those that represented the States, they placed it in the power of those representing the States to remove them. That is, they held the power of removal all the time, directly or indirectly, and intrusted it to no single individual. As to the officers of the United States, who are those under the Executive, they meant to hold the same hand upon them, and they did hold it. They meant that the military, the maritime, and the civil alike shall be subject to impeachment and trial, and that if it is necessary this court can drag from his height the military hero or may drag from his depths the depredating custom-house officer. This is the view we take of this, and nothing more. We do not stand in opposition to any principle contained in the Blount case; but in that Blount case there was nothing decided by the court that in any way collides with the views we have announced.

I will now only call attention to the final resolution in that case, because I have already consumed almost double the time I intended.

Mr. CONKLING. Before the manager enters upon another point, if it will not incommode him I should like to make an inquiry touching a statute he cited, and the argument he derived from it.

The PRESIDENT *pro tempore*. The inquiry of the Senator will be reported.

The Secretary read as follows:

Section 1781 of the Revised Statutes, cited by Manager JENKS, concludes thus: "And any * * * officer convicted of a violation of this section shall, moreover, be disqualified from holding any office of honor, profit, or trust under the Government of the United States."

If the respondent be convicted on the indictment said to be pending under this section, can the judicial court pronounce the judgment required if in the mean time the Senate pronounces it; or should the court first pronounce judgment, what would be the weight of the fact in determining the province of the Senate?

Mr. Manager JENKS. We regard that fact as having little or no weight with reference to determining the authority of the Senate, because, as I have already discussed and expressed my views, from the fact that the court has not power to inflict any portion of its sentence

you cannot infer that the court has not power to try. Jurisdiction means the right to try and decide. If you take the definition of jurisdiction, it is the right to try and decide. To judge is what it means. It does not necessarily imply to execute. Hence you try and decide and execute so far as the circumstances of the criminal will permit, as I have already illustrated. This case would have no relevancy if that be the correct view, that you cannot argue from the fact that the court cannot inflict part of a punishment that therefore its jurisdiction is divested.

With reference to the trial of President Johnson, as cited by the last counsel for the defendant, I have looked in vain to see any relevancy in that argument or in the opinions there quoted. Those opinions were delivered with reference to the case they were then trying. The question whether one who was not an officer is impeachable was not before the court. Anything that a court or a judge thereof may incidentally say in arguing the proposition before his mind is not to be considered as even the opinion of the individual who may have been deciding the question.

Mr. SHERMAN. I will ask the counsel to read the finding in the Blount case.

Mr. Manager JENKS. Yes, sir. I was drawn away from that by the question of the honorable Senator from New York. There were two motions made, and from the two the action of the court is derived. This was the motion made in the Senate:

Resolved, That William Blount was a civil officer of the United States, within the meaning of the Constitution of the United States, and, therefore, liable to be impeached by the House of Representatives;

That, as the articles of impeachment charge him with high crimes and misdemeanors, supposed to have been committed while he was a Senator of the United States, his plea ought to be overruled.—2 *Annals of Congress*, page 2318.

It was substantially this: that a Senator of the United States is not a United States officer; and the whole argument in that case is embraced in the two propositions which were announced by Mr. Dallas as the two propositions which they would undertake to maintain, which are found on page 2263:

1. That only civil officers of the United States are impeachable; and that the offenses for which an impeachment lies must be committed in the execution of a public office.

I may say here that the word "civil" was not discussed at all. It was not a matter of any account whether they were civil or military. We exactly assent to the proposition that it is only an officer of the United States—that is, an officer at the time of committing the crime—who is impeachable; and that the crime must be committed in the execution of public office. That was the argument of Mr. Dallas, and we stand exactly upon that.

The next proposition is:

2. That a Senator is not a civil officer impeachable within the meaning of the Constitution; and that, in the present instance, no crime or misdemeanor is charged to have been committed by William Blount in the character of a Senator.

These were the two propositions that Mr. Dallas and Mr. Ingersoll undertook to maintain. They did maintain these propositions, and we exactly accord with the view stated in these resolutions. I have read the resolution which was first offered in the Senate. I now read what followed:

After debate, on motion, the court adjourned till twelve o'clock to-morrow.

* * * * * * *

The court proceeded in the debate on the motion made on the 7th instant.

That is—

That William Blount was a civil officer of the United States within the meaning of the Constitution of the United States, and therefore liable to be impeached by the House of Representatives.

That, as the articles of impeachment charge him with high crimes and misdemeanors, supposed to have been committed while he was a Senator of the United States, his plea ought to be overruled.

And, on the question to agree thereto, it was determined in the negative—yeas 11, nays 14.

A counter-resolution was then offered, which is found on page 2319:

The court is of opinion that the matter alleged in the plea of the defendant is sufficient in law to show that this court ought not to hold jurisdiction of the said impeachment, and that the said impeachment is dismissed.

This resolution was adopted by a converse vote of 14 to 11. The matter alleged in the plea on which these resolutions are founded is as follows, and thus italicized:

That although true it is that he, the said William Blount, was a Senator of the United States from the State of Tennessee at the several periods in the said articles of impeachment referred to, yet that he, the said William, is not *now a Senator*, and is not, nor was at the several periods so as aforesaid referred to, an *officer of the* United States.

"Is not nor was an officer of the United States" was the substance of their plea. You will see from the argument of Messrs. Dallas and Ingersoll that they distinctly discussed the question whether he was an officer of the United States, and the finding was in conformity with the proposition as I have heretofore stated it. So that the case of Blount in no way contravenes the view which we take of this case, but, on the contrary, rather corroborates it.

Then, Senators, this proposition of the defendant presents itself to us in one general view, and I shall not consume more than five or ten minutes more at most. There was a contest in the history of English law between prerogative and law. It was maintained by the adherents of the Crown that prerogative was above law. The earlier Stuarts contended for that principle, and when Parliament passed a law that did not accord with the views of the king, at occasional intervals the king assumed the right to suspend the law, maintaining that he had that prerogative. The contest never came between those two propositions distinctly until in the time of Thomas Wentworth, Earl of Strafford, and he among others finally asserted (being an officer of England) "that the little finger of the king should prove thicker than the loins of the law." That placed the issue distinctly before the people. Shall the king's little finger be greater than the loins of the law was the proposition they discussed, and the stake was the life of a mighty nobleman. That stake was played for, and the freemen of England won. They said that the law is above every man; that the king cannot and shall not suspend it. Then, Senators, can this defendant suspend the Constitution of the United States? It gives you the full power to try all impeachments. It gives the House of Representatives full authority to impeach. Is his little finger mightier than the loins of the Constitution? Should that proposition be maintained? Shall official corruption maintain itself as superior to the great organic law of this mighty Republic? We say neither he nor the Chief Executive is above the law. I make no charge against the Chief Executive, because I maintain it was only the perfidy of the defendant that induced the acceptance of the resignation.

No man is above the law. If the decision were that you have no power to punish this crime, it is equivalent to saying that official crime can go unpunished at the option of the criminal. This would not be conformable to what we believe to be right. It is not conformable to the general principles of right and justice. It was an infamy for him to go and withhold material facts to get his patron, the Chief Executive, who had trusted him, to accept his resignation, It was in itself a crime; and can he by heaping crime upon crime relieve himself from all punishment? It seems unreasonable. It is true it might be maintained upon the principle which we often find announced as an irony. Jean Jean, for stealing a loaf of bread, may be consigned to the galleys, and with ball and chain, in the burning sun, may be made to work for years and years, although that loaf of bread was to supply the wants of hungering children. But it has passed into an irony that if a man has stolen a hundred, let him steal a million and he passes from the grade of a criminal to a model speculator, and even sometimes is regarded as a benefactor. In this tribunal at least that principle ought not to exist. The assertion which is made in *bitter irony* upon the justice of our country is the very principle upon which the defendant stands. "I was a criminal; I had done harm enough apparently, but I see myself in danger, and I commit the additional perfidy of betraying him who had trusted me, and by doing this additional crime I have heaped up crime enough to get beyond the range of the law. I made my former crime, which was insufficient perhaps, a million instead of a hundred." They urge the bitter irony of the crowd as the principle on which this case should be decided. We insist that this principle be not recognized. What does he bring here to this tribunal as an expiation for his offense? He brings his own perfidy; his own betrayal of trust. He does not bring the last drop of the patriot hero's blood; he does not bring the last sigh of devoted love; he does not bring the tear of the penitent; but he says, "I hold up my own perfidy, my own betrayal of my patron, as a screen. Under this panoply I stand, and by this I divest the jurisdiction." Senators, shall this be recognized as a sufficient shelter for the defendant in this case?

Mr. WHYTE. I move that the Senate sitting in the trial of this case take a recess for twenty minutes.

The motion was agreed to; and (at two o'clock and ten minutes p. m.) the Senate sitting for the trial of the impeachment took a recess for twenty minutes.

The PRESIDENT *pro tempore* resumed the chair at two o'clock and thirty minutes p. m.

Mr. Manager HOAR. Mr. President and Senators, the House of Representatives, in the name and for the protection of the whole people, demands of the Senate its judgment that William W. Belknap, for high crimes and misdemeanors in office, be forever disqualified to hold or enjoy any office of honor, trust, or profit under the United States. For all purposes of the present argument the guilt of the defendant is admitted. He meets the demand by a denial of the authority of the House to impeach and of the jurisdiction of the Senate to convict for any official misconduct when the party accused has, under whatever circumstances laid down his office.

The issue so made up is a simple and narrow one. Two or three brief sentences of the Constitution, two or three American precedents—there is nothing else that speaks with absolute authority on this subject. Yet, simple and narrow as is the question which is now for the first time directly presented to this tribunal for its judgment, there can be no doubt that it would have been deemed by the framers of the Constitution one of the most important to which it could give rise. The attempt is to abridge, by much more than one-half, the compass of the most august judicial proceedings and the powers of the most august judicial tribunal known to our Government.

The Constitution itself is a document of a few pages. A few legislative and executive and judicial processes, a few principles of universal application, a few impregnable barriers, have been deemed adequate provision alike for the exertion of the national forces and the protection of the rights of the American people for all coming time.

The convention that framed the Constitution depended upon the

process of impeachment to secure the people against two great dangers: usurpation of executive power and official corruption. Their debates, the debates in the State conventions, the countless arguments addressed to the people through the press, all show that the men of that generation expected the Constitution to stand or fall as it had solved the problem of protection against these two dangers, executive usurpation and use of office for corrupt personal ends. The discussions were of methods which should afford protection against executive power and executive corruption; the maxims cited were the maxims which restrain executive power and executive corruption. Treason and bribery are expressly named and coupled together in the Constitution as the two great heinous crimes against the existence of the nation itself. Which of these two high crimes thus joined together our fathers would have deemed the worst, they have left nothing on record to show. But I fancy, if those honest and frugal patriots had been asked the question, the answer would have shown something of the temper which the great English historian ascribes to the younger Pitt, that in an hour of temptation he might have been induced to ruin his country, but he never would have stooped to pilfer from her.

The political history of the country from which our fathers came, a history in which the framers of the Constitution were profoundly versed, was a history of perpetual strife with these two evils. From the time of the conquest down to a period within their own memory, in every generation, the heads of the men who had aided and the heads of the men who had resisted the usurpations of the Executive had given place to each other on Temple Bar. When Dr. Franklin was in England, in 1757 or from 1764 to 1775, he might have witnessed the scene, which Mr. Disraeli, the present prime minister, says took place in the House of Commons every session down to the time of the American war, when the secretary of the treasury used to sit at the gangway and, at a stated period of the session, give a five-hundred pound note to every man who supported the government.

I will read Mr. Disraeli's statement from his speeches on parliamentary reform. He says:

> Why, before the American war—a period not yet very remote—the secretary of the treasury used to sit at the gangway—just where the honorable member from Devonport is now accustomed to sit—and at a stated period of the session, the end or the beginning, gave, in the house, to the member who supported the government, a routine *douceur* of a £500 note; which was as little looked upon as bribery as head-money by a freeman. [A voice: "Walpole!"] No, no; much later than Walpole, and quite distinct from secret bribery. It was a practice which the manners of the age and the low tone of public feeling permitted.

As a bridle on executive usurpation and a remedy and punishment for official corruption, this power of impeachment, with the smaller penalty of removal from office and the greater penalty of perpetual disqualification beyond hope of pardon to return to it, was inserted in the Constitution. It was provided that the source of executive power should be, mediately or immediately, the people; but it was never dreamed that the public officer would be free from the temptation to usurp powers not belonging to him, or to use power corruptly because he owed his office to the people. No purpose can be traced in the history of those times to limit or impair in the least these constitutional securities. On the contrary, the debates in the conventions, national and State, and all the public discussions, show the great anxiety on these points. I do not think I need argue to those who took part in the last great trial of an impeachment, or to any person who takes part in this, that the Constitution has no securities to throw away.

It adds much to the gravity of this inquiry when you recall the fact that although this will be the judgment of a legislative body, it will be the judgment of a legislative body clothed with judicial functions. If you determine that you cannot rightfully exercise the jurisdiction now invoked, your decision is binding on your successors for all time. It has been well said by an eminent member of this court:

> You hold this great power in trust, not for yourselves merely, but for all your successors in these high places, and for all the people of the country. It is your duty to preserve and to transmit unimpaired to your successors in these places all the constitutional rights and privileges guaranteed to this body by the form of government under which we live.—*Speech of Manager Boutwell on the trial of the President.*

These constitutional securities are for all ages, for times like those of Charles II or James II, as well as like those of Washington; not only for times of few wants and simple manners, but for times when universal corruption and a universal tendency to usurp power on the part of public officers may prevail. That Senator will have inflicted an irreparable injury upon his country who by his vote shall forever limit the powers of his successors to reach the guilty counsellor of the Executive or the usurping or corrupt officer, to remove him and to place him in respect to public office, beyond the power to pardon and beyond the power to restore.

One of the learned counsel told you the other day that "the history of impeachments and of bills of pains and penalties and of bills of attainder is the history of the shame and the misfortune of England." And he cited the case of Floyd, a Catholic gentleman, sentenced to a cruel and ignominious punishment in the reign of James I for some idle expressions touching the Elector Palatine. Floyd was not impeached; nor is the counsel right in his general assertion. The learned counsel confounded together two things altogether distinct. Bills of attainder have never found in this country anywhere either a place or a defender. But the great judicial power of impeachment has, I believe with scarcely an exception, been exerted in England justly and with the most beneficent effects upon public liberty and public virtue. I have not examined every recorded case. If I had I ought not to weary you with their recital. But I will cite one weighty authority, which you will, I think, accept as decisive of this question. Hallam, the great historian of English constitutional liberty, says of the impeachment of the Earl of Middlesex, in the time of James I:

> This impeachment was of the highest moment to the commons, as it restored forever that salutary constitutional right which the single precedent of Lord Bacon might have been insufficient to establish as against the ministers of the Crown.—*Hallam's Constitutional History*, volume 1, page 401.

Again, in summing up the results of one of the most memorable Parliaments of James I, he says:

> The commons had been engaged for more than twenty years in a struggle to fortify their own and their fellow-subjects' liberties. They had obtained in this period but one legislative measure of importance, the late declaratory act against monopolies. *But they had rescued from disuse their ancient right of impeachment*; and of these advantages some were evidently incomplete, and it would require the most vigorous exertions of future Parliaments to realize them. But such exertions the increased energy of the nation gave abundant cause to anticipate. A deep and lasting love of freedom had taken hold of every class, except perhaps the clergy.

But there is no better evidence of the character and value of the process of impeachment than its incorporation into the constitution of every American State in force before 1787 excepting, possibly, those still under charter government, and into the Constitution of the United States. Does the learned counsel think that John Adams, who drafted the Massachusetts constitution of 1780; that Jefferson, who inspired the Virginia constitution of 1776, with the fires of the Declaration of Independence burning in heart and brain; that Hamilton, and Franklin, and Morris, and Madison, and George Mason knew nothing of the history of English liberty? Why, the Declaration of Independence caught its flame from the constitution of Virginia. The two torches were lighted by the same hand and in the same summer; and yet the constitution of Virginia expressly provides for the impeachment of the governor after he leaves office, and for the impeachment, whether in or out of office, of every other civil officer whatever. It is to the writings of these men you must look for the best exposition of the constitution of England. When they provided this weapon for the arsenals of the State, they knew well enough on which side it would be drawn and used.

The learned counsel for the defense have made a comparison between this body and the courts of the country, implying that they expect less of judicial calmness and freedom from undue bias from the Senate than from them. Not so judged the framers of the Constitution. In that remarkable number (64) of the Federalist, which is one of the few the authorship of which has been claimed for all three of the great men who joined in that work, (it is No. 64 in Mr. Dawson's edition, No. 65 in the older editions,) the author—I will not detain the Senate by reading his entire language—goes on to discuss the question and to answer the question of the capacity of the Supreme Court to be clothed with this high constitutional function. He says:

> It is much to be doubted whether the members of that tribunal would at all times be endowed with so eminent a portion of fortitude as would be called for in the execution of so difficult a task; and it is still more to be doubted whether they would possess a degree of credit and authority which might on certain occasions be indispensable toward reconciling the people to a decision that should happen to clash with an accusation brought by their immediate representatives.

He then pronounces, as the convention had already pronounced, that this body—numerous; secure in its long constitutional term of office; secure in its election by bodies in the States themselves removed one step from popular impulse and movement and violence; secure in its character, in its authority, and in its numbers—was the only body to which such a question as this could safely be committed.

The history of impeachments in this country has proved the correctness of this opinion. Before what State senate, in what case before the Senate of the United States has the party impeached failed of an impartial trial and a righteous judgment? The advantages of the accused in an ordinary criminal trial are outweighed a thousand times by the selection for his judges of the seventy-four citizens of the Republic first in official rank and the requirement of a two-thirds vote for his conviction. It was said by the counsel for the defendant that this was a question whether the Senate had power to try forty millions of American citizens for crime. I do not think the number of American citizens who have committed high crimes and misdemeanors in national office is or ever will be very large. Jurisdiction in impeachment extends only to abuses of official trust. The jurisdiction of the Senate is a national one, and is limited to abuses of national official trust.

The time for the determination of this question seems to me a peculiarly fortunate one. We are in no tempest of political passion threatening to disturb the serenity of this Chamber. There is no political division in this presentment. The House, with entire unanimity and with no distinction of party, has expressed its judgment both of the guilt of the defendant and the power to institute the process. He has already removed himself from office. The right to hold office under the United States hereafter is likely to be of equal value to him whether he escape trial by this plea or be convicted of the offense by the Senate and on that conviction receive the full constitutional sentence. If there be any rumors or excitements anywhere the only persons concerned in this trial whom they have moved are the counsel for the defendant when they were led to think

that the Senate of the United States on oath could not fairly try whether $12,000 a year paid by a post-trader to the man who got him his place was divided with the Secretary who made the appointment. If the defendant be indeed innocent, or if, as his counsel says, he have a reputation which he values more than life, the only haste in the course of these proceedings which has in the least prejudiced him is the haste with which his counsel advised him to lay down his office, and the only wrongful judgment is the judgment which determined him to keep his own story of the transaction from the knowledge of his countrymen and from you who are to judge him.

The people of this country are just. The Senate is just. No defendant, if innocent, need fear to trust his vindication to either.

It is therefore a great right of the American people, and not the fate of an individual culprit, with which you have to deal to-day.

I have one other preliminary remark only. Surely if any occasion can arise which will justify the appeal to this great remedy it is a well-founded charge of bribery against the head of the Department of War. Corruption in the legislator, in the Senator, or the Representative, is inexpressibly base and infamous. But the legislator frequently lays down his office. He acts as only one of a numerous assembly, in the gaze of the whole people, answerable to a jealous constituency and watched by a jealous opposition. Corruption in the judge is odious and degrading. But the judge acts on principles which he must state in public and which must conform to the precedents known by heart to a learned profession. He shares his duties with juries and with associates. His court is open. Opposing counsel must be heard and opposing suitors must be present at every step. The persons must be few whom he can wrong with any hope to escape detection and punishment.

But the Secretary of War is intrusted with the constant care and supervision of Government property of vast amount and value. He has practically, and in spite of every possible precaution that you as legislators have been able to devise, power over large contracts to be entered into and performed at remote places. He has the right, without appeal, to allow large claims against the Government. He has the power most seriously to affect the fortune of all persons who might suspect abuses and whose duty it would be to make complaint. But this is by no means all or the largest part of it. He is the head of that one Department in our Government, or rather one of the two Departments in our Government, whose ruling principle is honor. The Army and the Navy are the spotless lilies of the national service. Everywhere else it is enough to obey the law and to perform the duties of office. But the soldier must attain and conform to a loftier standard of personal character and conduct. Any conduct unbecoming an officer and a gentleman is sufficient to drive him from the service and degrade him irrevocably in the estimate of mankind. The example of bribery in the head of the War Office must inevitably debauch the entire military service of the country.

Here let me refer in his speech on the impeachment of Warren Hastings, to Burke's description of the effect of bribery in the governor-general of India:

> But, my lords, when the vices of low, sordid, and illiberal minds infect that high situation; when theft, bribery, and peculation, attended with fraud, prevarication, falsehood, misrepresentation, and forgery; when all these follow in one train; when these vices, which gender and spawn in dirt and are nursed in dung-hills, come and pollute with their slime that throne which ought to be a seat of dignity and purity, the evil is much greater. It may operate daily and hourly; it is not only imitable, but improvable, and it will be imitated and will be improved, from the highest to the lowest, through all the gradations of a corrupt government. They are reptile vices. There are situations in which the acts of the individual are of some moment, the example comparatively of little importance. In the other the mischief of the example is infinite.—7 *Burke's Works*, pages 280, 281.

Our people, Senators, feel a just pride in the Military Academy at West Point. Some of you have witnessed in person the effect of that wonderful system of military education which the wisdom of our Government has planned and brought to so much perfection for the instruction of our regular officers. You have seen how the youth, coming often from the humblest places in life is transformed by its four years of discipline. By that austere training—the training alike of the scholar and the knight—the youth is brought to cherish truth, to despise wealth and luxury, to be content with frugal and simple living. In a report on West Point signed with the names of J. W. STEVENSON and JOHN SHERMAN and addressed to W. W. Belknap in 1870, I find "a high sense of honor, a sacred regard to truth, and a feeling of individual responsibility to God" stated as the fundamental principles which that institution seeks to instill into its pupils. But what notions will the cadet get of these virtues who sees on commencement-days the Government, to him *in loco parentis* and to whose service his life adorned and consecrated by these virtues is to be devoted, represented by a Secretary of War whose hands are filled with bribes, a practice with which falsehood and deceit are inseparably connected?

There are four principal sources from which we can derive aid in determining the extent of our constitutional power to render judgment on impeachment:

First, the history of these clauses of the Constitution as found in the debates and journals of the convention of 1787;

Second, the opinion of other tribunals or public men or writers of authority;

Third, the argument derived from the language of the Constitution; and

Fourth, the broader argument derived from a consideration of the great public objects to be accomplished.

I hope to satisfy the Senate that all these point the same way; the history of the steps by which these constitutional provisions found their place, the few authorities which can be found on the subject, the narrower argument drawn from the language of the Constitution and the broader argument drawn from a consideration of the great public object to be accomplished all point the same way and bring us irresistibly to the conclusion that the power of the Senate of the United States over all grades of public official national wrong-doers, a power conferred for the highest reasons of state and on fullest deliberation, to interpose by its judgment a perpetual barrier against the return to power of great political offenders, does not depend upon the consent of the culprit, does not depend upon the accidental circumstance that the evidence of the crime is not discovered until after the official term has expired or toward the close of that term, but is a perpetual power, hanging over the guilty officer during his whole subsequent life, restricted in its exercise only by the discretion of the Senate itself and the necessity of the concurrence of both branches, the requirement of a two-thirds' vote for conviction and the constitutional limitation of the punishment.

I desire to read very briefly an account of the method by which these clauses found their place in the Constitution. I confess when I heard what was said by the honorable counsel for the defendant on that subject the other day I was absolutely amazed that two pairs of eyes looking at the same text with a different intent could reach such different conclusions. The honorable counsel told the Senate that two of the most famous lawyers of our great constitutional period, one of them a man who had set his name to the Constitution itself, made to your predecessors, when a great constitutional question was up, a statement of what their individual opinion was upon a question like the one we are now dealing with, and he thought that the reason Jared Ingersoll and Mr. Dallas made this pregnant and important statement of their opinion to the Senate of the United States was because they had not had a shilling to state it otherwise. Whether the learned counsel has had or is to have a shilling or whether the effect of that shilling upon his vision has been that which he attributes to the absence of the same coin in the case of Mr. Dallas and Mr. Jared Ingersoll, it would be presumptuous in me to inquire or even to speculate. But I think I can show to the Senate of the United States, from the history of the formation of this Constitution, that the jurisdiction conferred was complete, and that the unanimous purpose of the convention to confer the power of impeachment over everybody committing crime in office is to be found and proved by its debates, and that the clause saying that civil officers can be removed on conviction is put there as an exception to the clauses which previously had determined the tenure of those offices. In other words, the framers of the Constitution had given the power of impeachment to the House, given the power of trial to the Senate, extended the power to all cases of national official wrong-doers, prescribed the mode of proceeding, the numbers necessary to convict, limited the judgment, and passed from that question. But when they came to deal with the power of pardon, in order that there might be no apparent repugnance, they said that the President may pardon "except in cases of impeachment." When they came to provide for a trial by jury, in order that there might be no suggestion of a repugnance, they said "except in cases of impeachment." When they came to provide that the judge should hold office during good behavior, and that the President should hold for four years, and the Vice-President also, in order that there might be no apparent repugnance, they said these officers may be removed, however, on judgment and conviction on impeachment.

The learned counsel, in opening, when he read to you certain passages of the history of the steps by which this last paragraph, to which I have referred, traced how it got its place in the Constitution; but he left out the fact that the authority which we invoke, the general power to impeach, to try, and to convict, had been already conferred in the amplest manner, limited only as I have already stated. The debates in the convention of 1787, as reported by Mr. Madison and Mr. Yates, show no difference of opinion in the convention as to the propriety of giving to the House of Representatives the general power of impeachment of public officers. There was difference of opinion whether the trial should be by the Supreme Court, by a special court, or by the Senate, and whether the President should be liable to be impeached while in office or only after the expiration of his term.

If the original proposition had prevailed, first made to the convention in a series of resolutions by Mr. Randolph—and, Senators, remember that Mr. Randolph's resolutions are the backbone of the Constitution—there would be no doubt. They were presented, referred to the committee of the whole, reported from the committee of the whole, amended, referred to a committee of detail, and finally brought back by the committee of style in the complete and perfect form of the Constitution. But from the embryo to the full birth Mr. Randolph's resolutions are the principle of life of the Constitution, and the resolutions of Mr. Paterson and Mr. Pinckney, which alone Mr. Carpenter read the other day, are merely resolutions which were referred to the same committee, but upon which the convention never took action.

If the original proposition had prevailed, first made to the conven-

tion in a series of resolutions by Mr. Randolph, and afterward adopted and reported by the committee of the whole, the general power of trial of all civil officers on impeachment would have been vested in the Supreme Court, leaving the method of proceeding and the limit of jurisdiction and punishment to be ascertained from the common law. There is where you have your first proposition. It is the general power of trial of all civil officers on impeachment vested in the Supreme Court, everything else being left to the English practice, to be ascertained from the common law or determined by legislation, with the limitation on the term of office of the President alone, "to be removable on impeachment and conviction of malpractice and neglect of duty."

On the 13th of June Mr. Randolph's ninth resolution, giving to the Supreme Court unlimited jurisdiction over impeachment of any national officers, was agreed to without dissent.

On the same day Mr. Gorham reported from the committee nineteen resolutions, which contained a plan or scheme of government, of which the ninth and thirteenth were as follows:

Resolved, That a national executive be instituted, to consist of a single person; to be chosen by the National Legislature for the term of seven years; with power to carry into execution the national laws, to appoint to offices in cases not otherwise provided for, to be ineligible a second time, and to be removable on impeachment and conviction of malpractices or neglect of duty; to receive a fixed stipend by which he may be compensated for the devotion of his time to the public service, to be paid out of the National Treasury.

13. *Resolved*, That the jurisdiction of the national judiciary shall extend to all cases which respect the collection of the national revenue, impeachment of any national officers, and questions which involve the national peace and harmony.

This committee from which Mr. Gorham reported was the committee of the whole, and you have then this ample jurisdiction reported from the committee of the whole to the convention, containing the unlimited authority to try impeachments of any national officers and vesting it in the Supreme Court.

On the 5th of June Mr. Paterson laid his plan before the convention, which gave the national judiciary "authority to hear and determine on all impeachments of Federal officers," the power to remove the President being vested in Congress on application of a majority of the executives of the States.

July 18, the clause concerning impeachment of national officers was struck out from the enumeration of the powers of the Supreme Court. It is clear from the whole proceedings that this was done for the purpose of transferring the power to try impeachment to some other department of the Government, and not in the least with the object of limiting or destroying it altogether. There is no reason to think that in regard to all officers except the President there arose in the convention debate or question that the power to impeach them should be as unlimited as it was in England, the extent of the punishment alone being restrained.

July 20, the debate arose on the method of electing the President and on the tenure of his office.

On the clause "to be removable on impeachment or conviction for malpractice or neglect of duty" Mr. Pinckney and Mr. Gouverneur Morris moved to strike out this clause.

Now, remember you had at that time a universal power of impeachment over all national officers. Then they were dealing with the term of office of the President, and they had before them a clause which said that the President should be removable, limiting his four years in that respect upon impeachment.

Mr. Pinckney observed he ought not to be impeachable *while in office*.

That shows the understanding perfectly, that under the general clause he was impeachable after he left office, but that his four years' term, according to Mr. Pinckney, should go on.

Mr. DAVIE. If he be not impeachable *while in office*, he will spare no effort or pains whatever to get himself re-elected.

Mr. WILSON concurred in the necessity of making the Executive impeachable *while in office*.

Colonel MASON. When great crimes are committed, *I am for punishing the principals as well as the coadjutors*.

That is, Colonel Mason recognized the existence of the general power to punish the coadjutors and other officers as well in as out of office, and was for putting the President while in office on the same ground.

This debate derives great significance from the fact that in two of the States, Delaware and Virginia, the power of impeachment of the executive only existed when he was out of office, and Vermont and Georgia in constitutions adopted a very few years afterward, almost contemporaneous, gave the power of impeachment over all who have been or may be in office, as cited the other day by Mr. Blair. In other words, these men, familiar with constitutions some of which made the officer that is the head of the State, impeachable only after he had left office and others which gave the general power over all the executive officers in or out alike, are dealing with the Constitution of the United States; they put in this universal power of impeachment without an objection from any quarter, reported unanimously from the committee of the whole, and then go on to determine and to debate whether, as in Delaware and Virginia, the executive while in office shall be in the same condition, which would of course make him dependent on the other branches of the legislature, as he would be out of office and as all other executive officers were either in or out.

On the 26th of July the resolutions, as amended, were referred to the committee of detail. As the plan then stood, the power to provide for proceedings and punishment on impeachment would have clearly been vested in Congress without limit.

August 6, Mr. Rutledge reported from the committee of detail a constitution—it had been in a series of resolutions up to that time—which provided:

The House of Representatives shall have the sole power of impeachment. (Article 4, section 6.)

The President shall be removable on impeachment by the House of Representatives and conviction in the Senate of treason, bribery, and corruption. (Article 10, section 2.)

The jurisdiction of the Supreme Court shall extend to the trial of impeachments of officers of the United States. (Article 11, section 3.)

Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States. But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law. (Article 11, section —.)

This report was first amended August 22, by providing that the trial of judges of the Supreme Court on impeachment should be before the Senate, then on 25th of August by excepting convictions on impeachment from the President's power to pardon, and August 28th by excepting it from the clause guaranteeing trial by jury.

August 27 the clause for removing the President on impeachment and conviction was postponed, on motion of Gouverneur Morris, who thought the Supreme Court an improper tribunal.

August 31 all the postponed clauses and such parts of reports as had not been acted on were referred, on motion of Mr. Sherman, to a committee of one from each State.

September 4 the committee reported, recommending the insertion, instead of the ninth clause, of the words "the Senate of the United States shall have power to try all impeachments; but no person shall be convicted without the concurrence of two-thirds of the members present." They reported also the provision that "the Vice-President shall be *ex officio* President of the Senate, except when they sit to try the impeachment of the President, in which case the Chief Justice shall preside," &c.

They further reported the clause making the President removable from office on impeachment for treason and bribery. This clause gave rise to some discussion on the question whether the Senate or the Supreme Court were the fitter tribunal to try the President and on the question of authorizing the removal for other misconduct than treason or bribery; whereupon the clause was amended as it now stands.

It was then voted, without debate and apparently without division, to add to the clause making the President the subject of removal the further words "the Vice-President and all civil officers of the United States shall be removed from office on impeachment and conviction."

This history of the formation of the Constitution seems to me to show conclusively that article 2, section 4, of the Constitution, which provides that the President, Vice-President, and all civil officers shall be removed from office on impeachment and conviction, was inserted solely as a limitation on the tenure of office, and not as a limitation on the judgment on impeachment or on the jurisdiction.

When the clause in the Constitution, article 3, section 4, was added the convention was dealing with the tenure of executive office. They had passed from the subject of impeachment. They were not creating the court. They were not defining the judgment or directing the process. All that was complete. There can be no question that the common-law power of impeachment had been vested in the two Houses of Congress, with all needful provisions as to the trial, the conviction, and the sentence. When they vested the pardoning power in the President it was deemed necessary to guard against an apparent repugnance by excepting cases of impeachment. When they secured the trial by jury in the trial of all crimes, it was deemed necessary to guard against a like apparent repugnance by excepting cases of impeachment. When they fixed the tenure of civil offices, providing a tenure during good behavior for the judge, a term of four years for the President and Vice-President, and left the tenure of others to the appointing power or to the law, they guarded against another like apparent repugnance by excepting cases of impeachment.

II. The authorities upon the question are not numerous, but they are all on the side of the power.

Mr. Rawle, a very able and learned writer, takes it for granted that the liability to impeachment extends to all who have been as well as to all who are in public office.

Judge Story, section 803, states one or two arguments of a literal and narrow character against the power to enter judgment of disqualification without judgment of removal, and very clearly, as it seems to me, indicates that the inclination or leaning of his mind in that direction is in favor of the construction contended for by the defendants; but you will remember that Judge Story at that time had not before him this great light which comes from the reading of the Madison papers, as they were not then published. Judge Story was not speaking either under the stimulant of official or judicial responsibility. He had not heard counsel. Judge Story is a writer the habit of whose mind was, as we all know, to state arguments on the one side or the other, giving them their full force without committing himself, but he goes on and expressly declares that—

It is not intended to express any opinion as to which is the true exposition of the Constitution on the points above cited. They are brought before the learned reader as matters still *sub judice*, the final decision of which may be reasonably left to the high tribunal constituting the court of impeachment when the occasion shall arise.

The question was expressly raised before the Senate in the case of William Blount, the first case of impeachment which arose under the Constitution of the United States. Blount was a member of the Senate who had been expelled a few days before the impeachment for the same offense for which he was impeached.

Blount pleaded to the jurisdiction that a Senator of the United States was not a civil officer; that he had ceased to be a Senator when he was impeached, and that the acts charged were not done in the execution of his office, and the cause was heard on a replication to this plea in the nature of a demurrer.

I wish for a moment to ask the Senate to consider the proposition which the learned counsel on the other side founded upon that judgment. They would have you believe that the judgment of the Senate sustaining that plea, and declining to take jurisdiction, was because they deemed that a person liable to impeachment while in office could not be impeached after he had left it; and it is therefore an authority on their side. If that be true, then the question whether a Senator of the United States can be impeached by the House of Representatives is an open question under our Constitution. That is contrary to the judgment of every text writer, and I venture to say of every member of this tribunal, however he may incline on the final question. If that be true, we have no authority under the Constitution which determines that the House of Representatives cannot impeach one of its own members, or that it cannot impeach one of the members of this body and compel the Senate to put him on trial. No, Senators, the judgment in the Blount case, as has been the unanimous construction given to it ever since, is that the nature of the senatorial office, the nature of the office of Representative in Congress, is utterly incompatible as created in the Constitution with the application to it of the jurisdiction of impeachment. Is it to be tolerated—can two branches of a legislative body dwell together under the Constitution in peace if one of them has the constitutional prerogative to lay its hand upon a member of the other and force that body to which he belongs to put him on trial for an abuse of that very legislative office to which he was elected? That is the limitation of the doctrine in the Blount case. The power of removal is given to each House for those very causes by another and independent and exclusive provision of the Constitution, as my distinguished colleague [Mr. LAPHAM] suggests.

The principal argument on both sides was on the question whether a Senator was an impeachable civil officer, and there is no doubt that the judgment sustaining the plea was on that ground. But the opinions of the very able counsel on both sides constitute very weighty evidence of the contemporaneous understanding of the Constitution. The two managers, Mr. Bayard and Mr. Harper, and the two counsel for the defendant, Mr. Dallas and Mr. Ingersoll, were among the ablest lawyers of their day. Mr. Bayard said:

> It is also alleged in the plea that the party impeached is not now a Senator. It is enough that he was a Senator at the time the articles were preferred. If the impeachment were regular and maintainable when preferred, I apprehend no subsequent event grounded on the willful act, or caused by the delinquency of the party, can vitiate or obstruct the proceeding. Otherwise the party, by resignation or the commission of some offense which merited and occasioned his expulsion, might secure his impunity. This is against one of the sagest maxims of the law, which does not allow a man to derive a benefit from his own wrong.

Mr. Dallas, for the defendant, said:

> *There was room for argument* whether an officer could be impeached after he was out of office; not by a voluntary resignation to evade prosecution, but by an adversary expulsion.

Mr. Ingersoll, for the defendant, said:

> It is among the less objections of the cause that the defendant is now out of office not by resignation. I certainly shall never contend that an officer may first commit an offense and afterward avoid punishment by resigning his office; but the defendant has been expelled. Can he be removed at one trial and disqualified at another for the same offense? Is it not the form rather than the substance of a trial? Do the Senate come, as Lord Mansfield says a jury ought, like blank paper, without a previous impression on their minds? Would not error in the first sentence naturally be productive of error in the second instance? Is there not reason to apprehend the strong bias of a former decision would be apt to prevent the influence of any new lights brought forward upon a second trial.

It seems to me that the consenting opinion of these leaders of the American bar, two of them making a concession against their client, is entitled to great respect. They all agree that the fact that there can be no judgment of removal is not decisive against the maintenance of the proceeding; for that is true whenever the office has been laid down. But the defendant's counsel confine their objection solely to the fact that the removal has been accomplished by another constitutional mode of dealing with the same offense, and one which has disqualified the tribunal itself from proceeding to give judgment in impeachment.

I do not agree with the distinguished gentlemen on the other side as to the statement of a principle of constitutional law made by Jared Ingersoll and Mr. Dallas—a concession directly against the interest of their client—because they were conceding that under some circumstances a person could be impeached after he had left an office. It was for the interest of their client to maintain the general doctrine that under no circumstances could that be done. One of these distinguished gentlemen says he is not capable, he never will be led by any professional necessity, to argue that a man who lays down his office to avoid the penalty of his crime can so escape, and the others in different language but in substance concurred in the same opinion. They put their argument on the ground that under another constitutional provision the man had been expelled for the same cause from the Senate within a few days. In other words, a constitutional and quasi judicial proceeding had been had which not exempted the defendant but disqualified the tribunal. One of the gentlemen goes on to argue, "how is it possible to have a trial on impeachment before a body that by a two-thirds vote has just determined every question of fact which is involved in the issue?" That was the argument which those counsel submitted to the Senate at that time.

Of the soundness of the decision in the Blount case no question as far as I can remember has been raised since. That the members of either House of Congress should be impeachable by or before the other, or that an officer whose duties are legislative should be called in question elsewhere for official acts, could never be tolerated and is repugnant to the nature of the office itself. The claim that the decision was on the ground that he was out of office cannot be maintained. Would Blount have been impeachable if he had staid in office? Does the learned counsel maintain that? There has been no attempt to do it. Although I am sorry to say there have been cases enough of official misconduct, no attempt has been made to impeach a Senator or Representative from that day to the present.

This question was directly presented in the case of Barnard in New York in the year 1872. After very full and able arguments, the court of impeachment, consisting of the court of appeals and the senate, voted 23 to 9 that the plea of the respondent that he could not be held to answer for offenses committed in a former term of office which had expired be not sustained. The court afterward unanimously found the defendant guilty on most of the articles to which this plea applied.

The counsel attempt to break the force of the decision in the case of Judge Barnard by suggesting that it only decides that a man who holds one office can be impeached for what he did in another. In other words, it is gravely claimed that the decision of Barnard's case is on the ground that you may impeach a civil officer only while he holds office; but that you may impeach him while he holds office for anything whatever which he did before he entered upon it, whether those acts had any relation whatever to the office he holds or not. Can any Senator, after reading the discussions in the Barnard case, believe that any member of the tribunal who composed it rested his decision on that ground? The able and ingenious counsel who defended Judge Barnard did not deem it fit for them to present this ground to the court, so far as I can see, and the counsel who prosecuted the impeachment against him had nothing of the sort to say.

I have, Senators, one other authority to cite on this matter. It is the opinion of an individual statesman, but carrying with it a weight on such a question as this not surpassed by that of anything except a judgment of the Senate itself. If this were a doubtful matter his character and history might have been expected to bring him to another result. He had held every variety of civil office. His life was an example of independence of individual judgment, of a struggle on the side of liberty against authority, against the power of public bodies and of public opinion. His early youth was passed among the opening scenes of a revolution. In middle life he was driven from the Presidency, which he had administered with unsurpassed wisdom and integrity, by a storm of popular delusion and folly. At the age of fourscore, in the cause of liberty he had bared his breast against a dominant majority both of Congress and of people, looking only "to another age" for his vindication. Certainly this man would not incline to extend unduly the power of a political body to punish political offenses by a judgment of political disfranchisement.

Yet John Quincy Adams, in 1846, declared:

> And here I take occasion to say that I differ from the gentleman from Virginia, [Mr. Bailey,] and, I believe, other gentlemen who have stated that the day of impeachment has passed, by the Constitution, from the moment the public office expires. I hold no such doctrine. I hold myself, so long as I have the breath of life in my body, amenable to impeachment by this House for anything I did during the time I held any public office.
>
> Mr. BAILEY. Is not the judgment in case of impeachment removal from office?
>
> Mr. ADAMS. *And* disqualification to hold any office of honor, trust, or profit under the United States forever afterward; a punishment much greater, in my opinion, than removal from office. It clings to a man as long as he lives; and if any public officer ever put himself in a position to be tried by impeachment, he would have very little of my good opinion if he did not think disqualification from holding office for life a more severe punishment than mere removal from office. I hold, therefore, that every President of the United States, every Secretary of State, every officer impeachable by the laws of the country, is as liable twenty years after his office expired as he is while he continues in office.—*Congressional Globe, April* 13, 1846.

The learned counsel did me the extraordinary honor to quote to the Senate some words which I uttered in another place, the discussions in which are not very proper for consideration here, as it seems to me, when this question was up. The honor was a little diminished by the fact that the same counsel think that the House of Representatives are forever estopped in their great constitutional power of impeachment by the legal opinions of Mr. WILLIAM LAWRENCE in the Fortieth Congress, as matter of law, and as matter of fact by the action of Mr. HIESTER CLYMER in this. I suppose we might perhaps reply by the citation which my honored associate [Mr. JENKS] made of the opinion of Mr. Spofford, the Librarian, who I suppose fairly by the same logic would estop both branches. When the language which Mr. Carpenter quoted the other day was uttered, the question was on passing the resolution to impeach this officer, under the previous question, when a member of the House who has not at all changed his in-

dividual opinion on that subject insisted that more delay should be granted, and quoted the opinion of Judge Story, or the inclination of Judge Story's mind, as showing that it was a very grave and serious question. I will not stop to read the language, but I said, "I think very likely that the House will come to the conclusion on examination that it has the power," and, as some gentlemen who now do me the honor to listen to me know very well, I stated to the gentlemen who sat about me at the time my own individual opinion that the power of the House existed and that the jurisdiction existed. Suppose when this trial opened a proposition had been made to limit the distinguished counsel for the defendant to a five minutes' or sixty minutes' defense of their client for a discussion of this great constitutional question, is it not pretty likely that some Senator, whatever might have been his individual judgment as to the law, would have risen in his place and said, "Senators, here is a grave constitutional question about which such a jurist as Judge Story has doubted." Could he not do that without being prejudged or charged with any inconsistency if he should in the end come to the conclusion at which we arrive?

It is proper to say, however, as regards the case of a defendant fleeing from office in order that he may interpose this objection between his crime and his punishment, that the action of the House of Representatives finds great vindication when it determined that at least the proceedings for impeachment should begin on the day when the fugitive sought to avoid them by flight.

The narrower argument drawn from the letter of the Constitution is the chief argument of the defense. The counsel make two points upon the text of the fourth section of the third article. First, "all civil officers of the United States." The defendant is not now a civil officer; therefore he is not included in the description. Second, a judgment of removal is imperatively required. No removal is possible from an office already resigned. Therefore the judgment required by the Constitution has become impossible. On the other hand, we maintain that the language of the Constitution, even expounded as you would expound a deed or a will, without regard to the history of its formation and without resorting to the great public reasons which favor our construction, brings us to the same result as the authorities we have cited.

The articles which provide for the Senate and House contain a complete provision for impeachment. The House is vested with the sole power of impeachment. The Senate is vested with the sole power to try all impeachments. The judgment is limited within certain bounds. The number necessary for conviction, the oath or affirmation, and the calling in the Chief Justice to preside in case the President is tried are prescribed. We have here, then, an adequate and ample provision covering the entire process: authority to institute it, authority to try it, the method of proceeding, and the limitation of the judgment. For what is meant by impeachment, what offenses it shall cover, and what persons are liable to it, for the forms of pleading and rules of evidence recourse must be had to the common law. The power of impeachment is not defined by grant in our Constitution, but by limitation. The general power is conferred, and then a limitation is inserted upon the judgment, which is not to extend further than removal and disqualification, and the power of conviction, which shall only be by two-thirds vote. For everything else we are referred to the common law. Mr. Rawle says:

> Impeachments are thus introduced as a known definite term, and we must have recourse to the common law of England for a definition of them. (Rawle on Constitution, page 198.)

The learned counsel who opened for the defense says that United States courts have no common-law powers; and that is true. He says that is as true of this court as of all other United States courts. That I agree is true. But when a word is used in defining powers granted, you resort to the common law for its meaning. That is so as to the meaning of "admiralty," which is a jurisdiction granted to United States courts, or "maritime." So as to "levying war," "felony," "bribery," as to the term "quorum," by the legislative grant of power, for the limits of the power of pardon, and all these things, although they are granted by the Constitution, you refer for the meaning of the terms used in the grant to the common law, to which those terms belong.

Now, it is well settled that all abuses of official trust are impeachable in Parliament. At common law there is no limit as to person; there is no limit as to time; there is no restriction as to the character of the offense or in the punishment, save the discretion of the two Houses.

Mr. Wooddeson states the law in his lectures, volume 2, page 601:

> All the king's subjects are impeachable in Parliament. Such kinds of misdeeds, however, * * * as peculiarly injure the commonwealth by the abuse of high offices of trust are the most proper, and have been the most usual, grounds for this kind of prosecution. Thus, if a lord chancellor be guilty of bribery, or of acting grossly contrary to the duty of his office, if the judges mislead their sovereign by unconstitutional opinions, if any other magistrate attempt to subvert the fundamental laws or introduce arbitrary power, these have been deemed cases adapted to parliamentary inquiry and decision. So when a lord chancellor has been thought to have put the seal to an ignominious treaty, a lord admiral to neglect the safeguard of the sea, an embassador to betray his trust, a privy councilor to propound or support pernicious and dishonorable measures, or a confidential adviser of his sovereign to obtain exorbitant grants or incompatible employments, these imputations have properly occasioned impeachments, because it is apparent how little the ordinary tribunals are calculated to take cognizance of such offenses or to investigate and reform the general polity of the state.

Somers was impeached for putting the great seal to a disadvantageous treaty.

The word "impeachment" meant, when used in the Constitution, the right to proceed according to the usages of Parliament against such persons and for such offenses as those usages permitted.

It has been claimed that no person can be convicted except for crimes or misdemeanors indictable by statute or at common law. But the English authorities, too numerous to be cited, are otherwise. If the question were ever an open one whether an officer can be impeached for high official misdemeanors not prohibited by statute and not offenses at common law, it must be taken to be settled by the judgment of this court in the case of John Pickering, who was impeached, convicted, and removed from office for drunkenness and impropriety of speech on the bench; and by the express and unanimous resolution of the Senate when they expelled Blount, in which they recited that he had been guilty of high crimes and misdemeanors, which are the terms used in the impeachment clause, although his offense was inciting certain Indian tribes to make war against a foreign power, not, of course, an offense indictable at common law.

There are a thousand cases of the highest official misdemeanor which it is impossible to anticipate by a statute. The giving evil advice to a President by his constitutional counselors for corrupt personal ends, the abuse of the official discretion lodged so largely in the heads of Departments, the appointing a public officer for money before the statute passed making that an offense, the perverse and wanton refusal to discharge official duties imposed on them by law, may surely be reached by impeachment, though not punishable as crimes. So of the judge. It was forcibly put by the counsel for the people in the case of Barnard, in New York:

> For perverting the course of justice, for exceeding a just and lawful discretion, for oppressing suitors, for indecency on the bench, for being a buffoon in the public bar-rooms of the city—for these and other things, for which he ought to be degraded from the judicial office by a court of impeachment, where is the remedy? By indictment? No.—*Speech of Van Cott, trial of Barnard*, volume 1, page 173.

The judge who sits when his brother is a party, or who is guilty of gross oppression or gross usurpation, cannot be reached by any ordinary criminal process. Yet of his liability to be impeached there can be no question. The authorities on this subject are fully collected in a brief submitted to the Senate in the trial of the President, preferred by Judge LAWRENCE, and annexed by General Butler to his opening argument.

Now then—and this is a point of this argument which I deem a strong one—if it is true that the power to impeach at common law included the power to proceed against any subject for any abuse of public trust without exception, is not the absence of any express limitation in the Constitution almost decisive that it intended to leave the definition of the person to the common law, as it left the definition of the offense?

If there is anything that the framers of our Government did not leave to construction, but expressed in plain English, it was the limitations on the power of dealing with offenses in cases where they thought the interest of justice or of liberty required such limitation. They knew that the grant of the power of impeachment involved in it by the common-law meaning of the term the power to punish for official offenses not indictable, and the power to impeach, try, convict, and sentence after the offender had left office. In the beginning of that century Lord Chancellor Somers, the friend of liberty and the friend of America, had been tried for putting the great seal to treaties disadvantageous to England, on impeachment commenced after he left office. Lord Chancellor Macclesfield in 1725 was impeached for corruption in the sale of offices, and sentenced to fine and imprisonment, on proceedings resolved on by the Commons after he left office. It seems impossible that they should not have expressly confined impeachment to persons in office, if it had been their desire so to confine it. It seems impossible that any provision so confining it would have got into the Constitution without debate.

Mr. SARGENT. Mr. President, not to interrupt the manager, I should like to ask a question which I send to the Chair.

The PRESIDENT *pro tempore*. The inquiry propounded by the Senator from California will be read.

The Chief Clerk read as follows:

There are now several members of the Senate who have been in past years civil officers of the United States. Are they liable to impeachment for an alleged act of guilt done in office?

Mr. Manager HOAR. They are undoubtedly. The logic of my argument brings us to that result; and undoubtedly they are as safe from the operation of that process practically as the newly-born infant in his mother's arms. Does anybody suppose that there is to be a two-thirds vote of the American Senate which will rake up and try and punish for political offenses, when the public judgment of this people has demanded an amnesty? The whole power to punish, the whole judgment after the offender has left office is disqualification to hold office, and that judgment is a judgment in the discretion of the Senate. Hunt in Massachusetts, a justice of the peace—the language being exactly the same as this—was sentenced simply to suspension from his office and disqualification to hold any other for twelve months. That was the case of a justice of the peace in the town of Watertown, I think, early in this century.

Mr. SARGENT. I wish to propound a further question. I do not desire to interrupt the manager.

Mr. Manager HOAR. I am very happy to answer any question I can.

The Chief Clerk read as follows:

Then what becomes of the comity between the two Houses on which the learned manager laid stress?

Mr. Manager HOAR. Why, Mr. Senator, I do not understand that there is any comity which prevents pursuing a Senator into this Chamber for any offense that he has committed——

Mr. SARGENT. The necessity for good feeling between the two Houses?

Mr. Manager HOAR. I do not understand that there is any comity or necessity for good feeling between this Senate and any other tribunal whatever which prohibits pursuing him for guilt elsewhere with a lawful or constitutional punishment. He cannot be called in question by the court for anything he does or says in this Chamber, the blackest libel or slander though it might be conceived to be; and he cannot be called in question by the House of Representatives. My argument related to impeaching a Senator for senatorial conduct and for what took place here, and to the indecency of supposing that it ever was thought that the House of Representatives might require the Senate to try at its own bar a member whom it had permitted, without the exercise of its power of expulsion, to remain here. That was the argument, but of course if General Belknap had been elected to the Senate from the State of Iowa in the ignorance of the people, and had taken his seat in the Senate on that election, and after that these acts of bribery had been discovered, the House of Representatives could, and should, and would have demanded that he be sequestered from his seat in this Chamber, and be placed at the bar, as he now stands, as a criminal; and that power would be as necessary for the purity, and the honor, and the dignity of the Senate itself as it is for the protection of the American people.

Let me then sum up the argument, drawn from the language of the Constitution. The power of impeachment is not defined in the grant in the Constitution. It is conferred as a general common-law power. The judgment is then limited to removal and disqualification, and two-thirds required for conviction. No limit of its application to persons is inserted in the grant. But a subsequent limitation on the tenure of office is inserted, namely, the case of a removal by impeachment, to guard against the argument that officers, whose term is fixed in the Constitution, cannot be removed under the power of impeachment, just as impeachment is excepted in the clause securing the right of trial by jury and in the clause conferring the power to pardon.

But suppose we grant the phrase, all civil officers, to be inserted as a definition of the persons who may be reached by this process. Is the definition to be taken to apply to them at the time of the commission of the offense or at the time of the punishment? Suppose a statute enact that all wrong-doers may be punished. Is it not clear that if they be wrong-doers when they commit the act the liability to punishment attaches? The very statute which punishes bribery would fail by this construction to reach anybody, because it is in this respect, as has already been said, almost identical with the provision of the Constitution in its description.

The provision that the judgment shall extend no further than removal from office and perpetual disqualification authorizes any lesser penalty included within those limits to be imposed at the discretion of the Senate. In Hunt's case, in Massachusetts, the sentence was disqualification for a year under a like constitutional provision.

I ought to have added, in further reply to the honorable Senator from California, that if he refers to that large class of cases where the Constitution has expressly imposed a disability, that is, for aid and comfort to the rebellion in the late war, and where the Constitution has expressly provided a means of removing that disability, I should have no doubt that any person whose offense consisted, whether an official offense or an offense as a private citizen, in giving aid and comfort to the rebellion, could plead an exemption from impeachment when he had, under the very provision of the Constitution itself, by the vote of two-thirds of both branches, received his pardon. So that I do not think anybody need be much afraid of what will happen to him or to any person whom he thinks public policy requires should not be further pursued for state crimes, in coming to the conclusion for which we contend.

It certainly will not be seriously maintained that when a statute prescribes two punishments, one of which has become impossible, that the offender is thereby exempted from the other. The penalties provided in more barbarous ages will suggest abundant illustrations. Some of our old statutes provide that an offender be imprisoned or whipped, and in addition have his head shaved or his ears cropped, or labor in the tread-mill. Do the learned counsel think he would get rid of the imprisonment or whipping if he did not happen to have any hair or any legs, or if he had had his ears cropped before?

The whole constitutional provision, so far as affects our present purpose, can be summed up in two sentences which are scarcely a paraphrase or change of the existing text of the existing law, and these two sentences I think state precisely the contentions on the one side and on the other. We say that the Constitution in substance is this: "The Senate shall have the sole power to try impeachments, and civil officers shall be removed on conviction." The counsel for the defendant would state it to be: "Judgment in case of conviction shall be removal from office and disqualification *if the defendant is willing!*" That is the summing up of the two propositions.

But the meaning of these provisions of the Constitution must be ascertained after all by a broad consideration of the great public objects they were intended to accomplish. "Never forget," says Chief Justice Marshall, in McCulloch *vs.* Maryland—and that sentence is the key-note to his whole judicial power—"Never forget that it is a *constitution* you are interpreting."

It is clear that in the case of high state offenders it was deemed important by the people when they established the Constitution that the judgment of perpetual disqualification to hold office should be imposed in the discretion of the Senate. There is no need to argue that anything which finds expression in the Constitution is of grave national importance. This judgment of perpetual disqualification was provided, among other reasons, to prevent the return to office after removal or resignation of guilty favorites of the Executive. For that large class of impeachable misdemeanors which cannot be described in a statute beforehand it is the only penalty known to the Constitution. The mere removal from office carries with it little terror, and is of little public importance as applied to all officers less than the President himself. By our customs most offices, including those of the judges in many States, are laid down at brief and stated intervals. All officers are removable at the pleasure of the appointing power, with certain exceptions. To be removed from office, of itself, carries with it no degradation. If such removal be for a cause not involving personal infamy, it will in many cases work no disgrace, even if it take place on impeachment, unless the perpetual disqualification be attached to it. John Quincy Adams was right when he said:

> If any public officer ever put himself in a position to be tried by impeachment, he would have very little of my good opinion if he did not think disqualification from holding office for life a more severe punishment than mere removal from office.

A good deal has been said as to whether this constitutional judgment be a punishment or a remedy; but, after all, it seems to me, if we settle what the thing is, it is not necessary to trouble ourselves as to which of these two words is applicable to it. In a certain sense it is a punishment for a member of the House of Representatives not to be re-elected and to lose the confidence of his constituents or for a member of the Senate to lose the confidence of his State Legislature. It is a punishment in some sense for an executive subordinate officer to be removed for cause. And in that sense undoubtedly it was the purpose of the framers of our Constitution to have the terror of this result, whether it be removal or disqualification, held up before the official as a security against his guilt. But in the theological or the old legal sense in which we use the word "punishment"—that is, as an adequate expiation or atonement for an offense, the meting out of justice to the offender—of course this constitutional provision is not a punishment, because the Constitution expressly provides that the party may be held to answer to trial at law in all cases in addition to this. In that sense, therefore, the leading purpose of the Constitution was to secure the people this great remedy against the return to office of the guilty official.

The judgment of disqualification is in all cases, when re-appointment or re-election has taken place, the only method of accomplishing removal. Senators will reflect that this judgment of disqualification involves and includes removal from every office held by the person convicted at the time it is pronounced.

The exception of the judgment on impeachment from the operation of the power to pardon strongly shows the importance attached to that part of it which is to be of perpetual operation. How careful were the framers of our Constitution to mark their sense of the importance of this judgment of disqualification so that the man should never get back. Whittemore was re-elected by the people of his district after he had resigned and fled from the House of Representatives to avoid expulsion; and cases of such offenders may easily be conceived. Of course the expulsion from a legislative body they could not give that effect to, but the framers of the Constitution put into the power of judgment on impeachment this power of perpetual disqualification; and then they added that it should be beyond the reach of the Executive pardon, because it was intended to reach guilty Cabinet officers or counselors of the Executive.

It seems to me the decisive consideration in determining this question is this: The people of the United States are entitled for their protection to a certain judgment. The guilty officer shall be removed, and, if the degree of his guilt warrant the greater condemnation, he shall be incapable of being restored. The Constitution expressly mentions perpetual disqualification beyond the reach of pardon as the judgment which the Senate may think its duty in some cases to pronounce. Now can this protective judgment ever be any the less necessary because the crime has not been discovered until the official term has expired, although perhaps the officer has been re-appointed, or because just before the proceedings begin, or just before the judgment is pronounced, the official has laid down his office? Because the logic of my friends on the other side, as the counsel very frankly admitted, is this: They say that when a man has ceased to be a civil officer you cannot pronounce the constitutional judgment, because the constitutional judgment must be a judgment of removal; and therefore it is true, as the counsel admitted, that if that resignation be made after every Senator has publicly pronounced his opinion of guilt, before the judgment is actually entered, it may be pleaded

in arrest of judgment, and the power to pronounce the greater part of the penalty taken from the Senate.

It is true that there are statutes requiring or authorizing the perpetual disqualification to hold office to be inflicted by the courts of the United States as a punishment on conviction of crime. But the existence of these statutes does not meet the difficulty; for a protection to the people provided by the Constitution itself, and depending on the high discretion of this constitutional court, a statute provision, repealable at the will of the Legislature, can never be deemed an equivalent. A constitutional disqualification intended to bar out the guilty counselors of the Executive from a return to political power can only be placed beyond the operation of an Executive pardon when it is pronounced by the judgment of the Senate. The disqualification provided by statute can only apply to that comparatively narrow class of offenses which can be so foreseen as to be described with reasonable certainty in ordinary criminal legislation. Impeachment goes much further.

The whole constitutional theory of impeachment proceeds upon the ground that, while conviction for crime may be safely left to juries and its punishment to the discretion of inferior courts, the protection of the American people against the return to office of the guilty official has been deemed of importance enough to be attained by the mechanism provided by the Constitution of an inquest and impeachment by the Representatives of the whole people and a judgment of the Senate itself. It seems to me a monstrous absurdity to suppose that this great constitutional remedy of a judgment against the return to office of a high political official on account of great political offenses committed at the seat of Government should depend on conviction by a jury drawn by the marshal from the office-holding population of the District of Columbia on a trial conducted and controlled by officers of the executive, and on a sentence of a single judge of a court, however respectable, whose jurisdiction is confined within a couple of square leagues.

Besides, there is certainly a grave constitutional difficulty in supporting much of the legislation by which Congress has undertaken to clothe the national courts with the power of imposing disqualification to hold office as a punishment for crime. If it is to operate as a disqualification to hold those offices whose qualifications are defined by the Constitution, it is liable to the objection of declaring persons disqualified whom the Constitution declares qualified. If it is to operate upon persons holding office at the time of their conviction, it places the power of removal from office in hands where the Constitution has not placed it.

It is further argued that the danger of the return to office of persons guilty of great political crimes is a visionary and not a real danger, because to their restoration to most of the important offices under the Government the consent of the Senate is necessary. But there are many to which it is not necessary. If the guilty public officer whose crimes are not discovered until the expiration of his term of office or who lays down his office to escape conviction can thereby avoid sentence, he of course thereby avoids trial, as the very form of issue which we are now dealing with shows; neither Senate nor people nor President, to whom his claim for new confidence is presented, can have the advantage of any judicial trial, of any inquest, of any process for the discovery of concealed evidence, of any responsible accuser, in determining the question of his former guilt.

It is further suggested, in very influential quarters, that it is the duty of the executive officer by whom the guilty official has been appointed to withhold his acceptance of the resignation of such official until conviction and judgment upon impeachment can be had. This suggestion has hardly enough reason in its favor to merit an answer. In the first place, I deny that the right of any American citizen to lay down an office depends upon any act of acceptance of any person whatever. Any explicit and formal renunciation of the office by the official terminates his relation to it without the consent of any person whatsoever. This was lately held by the House of Representatives in the case of Whittemore, who resigned his seat in that body without its consent when the vote on the question of his expulsion was about to be taken. Does the right of the member of the Cabinet to resign his place to accept a seat in the Senate depend upon the consent of the President? Does the right of the members of this body to lay down their high office, perhaps to assume some other even higher, if there be any higher, depend upon its will? If this were true, must the officer guilty of high crimes be left in charge of his office until the House and the Senate meet and until judgment can be rendered upon impeachment? Must a defaulting Treasurer of the United States be left in charge of the whole Treasury until conviction and sentence? Should the Secretary of War have been forced to remain in charge of the War Office until the close of this trial, a charge including the custody of the documents among the records of his Department upon which his conviction may depend? The power given by the statute to the President to suspend an officer only exists when the Senate is not in session. The acceptance of a resignation is a mere formality, adding no validity whatever to the act. If it were not so, it would be an imperative duty whenever the officer in whom the power of accepting it is lodged believed in the guilt of the party resigning.

There are some authorities, English and American, to the effect that there are certain public offices which cannot be resigned without the consent of the appointing power or of some public board to which the officer belongs. These cases proceed upon the ground that the performance of an office to which the subject has been lawfully called is a duty which he cannot refuse. Wherever that doctrine extends—that is, wherever in England or America it has been held that the acceptance of somebody is necessary to a resignation—the citizen elected or appointed is compellable by *mandamus* to take the office originally even against his wish. But the American law as applied to offices not municipal or corporate is settled otherwise. (McCrary on American Law of Elections, page 260; People *vs.* Porter, 6 California, page 26; United States *vs.* Wright, 1 McLean, page 512; Gates *vs.* Delaware County, 12 Iowa, page 405; Lewis *vs.* Oliver, 4 Abbott's Practice, page 121.)

We are therefore brought inexorably to the alternative that proceedings for impeachment can be instituted and go on notwithstanding the withdrawal from office of the delinquent, or that the greater part of a jurisdiction expressly conferred by the Constitution exists and may be exercised, not at the discretion of the Senate, but at the discretion of the accused.

An argument is also drawn from the practice of criminal courts. It is said that when a judgment is required by statute to be for two things it cannot be for one of them alone, and that here the judgment must be by the Constitution either for removal alone or for removal and disqualification. The practice of criminal courts affords no rule binding in this Chamber. Undoubtedly, the laws of common justice and common reason are of universal authority. Undoubtedly, you can derive great aid in discovering and applying those rules from the sages of the law. But beyond these simple precepts of universal application, an attempt to entangle this high court, while exercising its exalted functions, in the technicalities of criminal practice, is, to use Burke's comparison, "as if a rabbit that breeds four times a year should attempt to prescribe the period necessary for the gestation of an elephant."

> Such confined and inapplicable rules would be convenient indeed to oppression, to extortion, bribery, and corruption, but ruinous to the people, whose protection is the true object of all tribunals and of all their rules.—*Burke's report of committee to inspect the Lord's journals.*

Among the narrow, technical, artificial reasons suggested by the practice of the police court, and of doubtful cogency even there, is this doctrine. I do not believe that it will be adopted here, or be relied on by the Senate as the foundation for a determination that where, in the contemplation of the Constitution, the safety of the state entitles the people on demand of its representatives to a solemn resolution of the Senate that a high state offender shall be removed from office and disqualified to return to it, the power to erect this barrier is taken away because the removal has become impossible.

But I do not admit that the Constitution requires this double judgment. The judgment is, in either case, for one thing—a larger or a lesser. It may be for removal simply. It may be for perpetual disqualification simply, which includes removal.

Before dismissing this proposition of the defense, consider exactly to what it would bring us. The proposition is that no judgment under the Constitution can be rendered by the Senate which does not remove from his place a person then holding a civil office under the United States. It applies only to the time judgment is actually pronounced. For all purposes of this argument for the defense, the constitutional remedy is defeated just as much if the offender lay down his office after the trial, after the opinions of Senators have been made known, if the resignation be pleaded in arrest of judgment at any time before judgment be actually pronounced and entered.

The defendant's construction of the Constitution, then, must be rejected, because it destroys for all practical value the most important portion of the authority of the Senate sitting as a court of impeachment, namely, the power to pronounce judgment of perpetual disqualification. But—and this is the last point I shall have occasion to address to the Senate—it must also be rejected because it leaves the power of removal itself almost entirely destroyed.

The judgment of disqualification is one method of removal. Wherever the officer has been re-elected or re-appointed, whenever he has been promoted to a more important office, wherever the evidence of his crime is not discovered until after the term of office in which it was committed has expired, or is discovered too late for proceedings of impeachment, the public are without other redress. Suppose a President corruptly use his office to secure a re-election. Suppose a Vice-President deal fraudulently with the returns. Suppose a Cabinet officer is an accomplice in such misconduct of the President, or be guilty of bribery just at the close of his term and is re-appointed. Is there no power reserved by the Constitution either to remove him or punish him?

The claim practically limits the constitutional redress to offenses committed during the first three years of a presidential term, unless it be supposed that the President should call an extra session to take steps for his own impeachment or that of his own counselors.

The impeachment of Andrew Johnson was resolved by the House on the 24th of February, 1868; the final judgment of acquittal was pronounced on the 28th of May, a period of three months and four days, precisely corresponding in length with the short session of Congress under our present arrangements. This does not include the time occupied by the House in obtaining the evidence, or in the debates which preceded the resolution of impeachment. This present impeachment has been pressed, I think, more rapidly than any other known in our

history; yet nine weeks have already expired since it begun. This fact shows that for any official misdemeanor committed in the last year of his office an impeachment and conviction of the President during his term will in most cases be found wholly impracticable. He may have secured his re-election by unconstitutional or corrupt use of his power, and the people, if he cannot be impeached after his term expires, are wholly without remedy.

The destruction of the power to impeach carries with it the destruction of the power of the House to make the inquest, leaving the people wholly dependent for their protection on the executive power of removal. This power does not extend to all cases. The Executive may be deaf to charges of guilt against officers in whom he has trusted, coming to him without authority and tested by no competent processes of investigation.

It is said that it is a dangerous construction which leaves the public officer exposed to impeachment during his whole natural life. But if he be guilty and deserve impeachment he ought to be so exposed. His safety against unjust prosecution or the revival of old political offenses, which the public peace requires should be buried in oblivion, is abundant. No impeachment can proceed unless both Houses concur.

The judgment of disqualification is clearly discretionary; and the Senate, in my judgment, may refuse even to take up for trial an impeachment presented by the House against an officer out of office in which it is clear that in the exercise of its discretion it would not be expedient to impose a judgment on conviction. No impeachment can proceed unless both Houses concur. No conviction can be had but by two-thirds of the Senate. No judgment of disqualification except in its discretion. When political passion breaks down all these barriers there will be little else in the Republic worth saving.

Impeachment is not likely to be a favorite process with the Senate or the House. There is no likelihood that we shall ever unlimber this clumsy and bulky monster piece of ordnance to take aim at an object from which all danger has gone by.

I wish to say a word or two in regard to the other question. I have dealt, as it was intended I should deal, chiefly with the main question; but, with regard to the question presented so well by my honorable associate who opened this case, [Mr. LORD,] (and that is, where the process of impeachment begins and the term of office ceases on the same day, the law will deem that the resolution of impeachment was adopted at the first moment of that day,) I will not undertake to restate and I certainly cannot re-enforce what my distinguished and able friend so admirably stated upon that subject; but I desire simply to say to the Senate that, if they will consult the authorities cited by my associate and the authorities cited by counsel for defendant, they will find that the two classes of authorities do not in the least conflict.

The principle is a principle in favor of judicial remedy. Every judicial remedy will be held to have begun, every judicial process, whether it be judgment or suit, at that time in the day in which it was instituted which is necessary for the preservation of the remedy which it is designed to secure. That is the rule which all these authorities established, and the authorities where a day was divided for the very purpose of preserving remedies and preventing their defeat are those which have been cited by the counsel for the defense.

I perhaps ought to make one single observation, though it is hardly necessary, in regard to the grave citation to the Senate of the instance where a person is permitted to change his domicile or to go across a State line for the purpose of instituting a lawsuit, and the attempt to extend the analogies of those rules to the cases where a criminal undertakes to flee from the penalties of his crime. Suppose a citizen of the State of New York commit treason against that State and flee into New Jersey, will the court be very likely, when he is brought back for trial, to recognize the doctrine that because he can go over to New Jersey to bring a civil lawsuit he is equally protected by the same logic in going into New Jersey to escape a criminal process against himself?

I claim, then, to have established that the history of the formation of the Constitution, the opinions of the best authorities, the letter of the instrument, and the grand object it was intended to accomplish, concur in requiring you to overrule this plea to your jurisdiction. To allow it is to put out of your hands the bridle placed by the Constitution in the hands of the Senate as a controlling check upon executive usurpation and executive corruption—the bridle placed in your hands by those men who looked through all ages, both the past and the future, in their far-reaching, statesmanlike discretion, not to be laid down by men with the experience of a single generation. This judgment will not only determine this question for all time for the Senate, but it will speak with an authority not to be disregarded in the construction of like clauses in the constitutions of more than thirty American States. Throughout this broad land, under national and State jurisdiction, the great constitutional power of impeachment, the life of public liberty and of public purity, is to be dwarfed or maintained in its fullest and most beneficent vigor as you shall decide this issue.

I do not stand here, Senators, as the accuser of Mr. Belknap, or as the advocate of the House of Representatives. I am here to speak for a right of the American people; a right which their ancestors secured to them by their Constitution, and which nothing but their own constitutional act can take away. It is that over every public officer, whether he be tempted to abuse or usurp power or to gain wealth by corrupt means in office, shall hang the dread of what the Federalist calls the "awful discretion" of the Senate to try him in the presence of the whole American people and to visit him with the perpetual infamy of its sentence. For the citizen accused of crime is the grand jury, and the indictment, and the statute of limitations, and the jury trial, and the law enacted beforehand. For him is the maxim that it is better that ten guilty escape than that one innocent perish. But for the public officer who voluntarily seeks or accepts these vast trusts, the safety of the whole state demands there shall be a higher responsibility and another method of punishment.

I have thus, Senators, very imperfectly performed the duty assigned to me by the House of Representatives. It has been a dull argument of a dry question of law. Your decision, like every decision affecting permanently the power and authority of the Senate, is to reach in its consequences to a period very far distant in the future. But I am much mistaken if there be not a very deep and present public interest in this issue.

I said a little while ago that the Constitution had no safeguards to throw away. You will judge whether the public events of to-day do not admonish us to look well to all our securities to prevent or power to punish the great guilt of corruption in office. We must not confound idle clamor with public opinion or accept the accusations of scandal and malice instead of proof. But we shall make a worse mistake if, because of the multitude of false and groundless charges against men in high office, we fail to redress substantial grievances or to deal with cases of actual guilt. The worst evil resulting from the indiscriminate attack of an unscrupulous press upon men in public station is not that innocence suffers, but that crime escapes. Let scandal and malice be encountered by pure and stainless lives. Let corruption and bribery meet their lawful punishment.

My own public life has been a very brief and insignificant one, extending little beyond the duration of a single term of senatorial office. But in that brief period I have seen five judges of a high court of the United States driven from office by threats of impeachment for corruption or maladministration. I have heard the taunt, from friendliest lips, that when the United States presented herself in the East to take part with the civilized world in generous competition in the arts of life, the only product of her institutions in which she surpassed all others beyond question was her corruption. I have seen in the State in the Union foremost in power and wealth four judges of her courts impeached for corruption, and the political administration of her chief city become a disgrace and a by-word throughout the world. I have seen the chairman of the Committee on Military Affairs in the House, now a distinguished member of this court, rise in his place and demand the expulsion of four of his associates for making sale of their official privilege of selecting the youths to be educated at our great military school. When the greatest railroad of the world, binding together the continent and uniting the two great seas which wash our shores, was finished, I have seen our national triumph and exultation turned to bitterness and shame by the unanimous reports of three committees of Congress—two of the House and one here—that every step of that mighty enterprise had been taken in fraud. I have heard in highest places the shameless doctrine avowed by men grown old in public office that the true way by which power should be gained in the Republic is to bribe the people with the offices created for their service, and the true end for which it should be used when gained is the promotion of selfish ambition and the gratification of personal revenge. I have heard that suspicion haunts the footsteps of the trusted companions of the President.

These things have passed into history. The Hallam or the Tacitus or the Sismondi or the Macaulay who writes the annals of our time will record them with his inexorable pen. And now, when a high Cabinet officer, the constitutional adviser of the Executive, flees from office before charges of corruption, shall the historian add that the Senate treated the demand of the people for its judgment of condemnation as a farce and laid down its high functions before the sophistries and jeers of the criminal lawyer? Shall he speculate about the petty political calculations as to the effect on one party or the other which induced his judges to connive at the escape of the great public criminal? Or, on the other hand, shall he close the chapter by narrating how these things were detected, reformed, and punished by constitutional processes which the wisdom of our fathers devised for us, and the virtue and purity of the people found their vindication in the justice of the Senate?

Mr. EDMUNDS. I move that the Senate sitting for this trial adjourn.

Mr. SHERMAN. I ask the Senator whether we had not better fix the hour on Monday a little earlier?

Mr. EDMUNDS. It is twelve o'clock by the rules. I will yield to a motion to adjourn to eleven o'clock on Monday. I withdraw my motion for that purpose.

Mr. SHERMAN. I should prefer to say ten o'clock, so as to certainly avoid a night session; but in order to give counsel ample time on both sides, I will say eleven o'clock.

The PRESIDENT *pro tempore*. The Senator from Ohio moves that the Senate sitting for this trial adjourn until Monday at eleven o'clock.

The motion was agreed to; and the Senate sitting for the trial of impeachment adjourned to Monday next at eleven o'clock a. m.

MONDAY, *May* 8, 1876.

The PRESIDENT *pro tempore*, (at eleven o'clock, a. m.) The Senate sitting for the trial of the articles of impeachment against William W. Belknap, pursuant to adjournment, now resumes its session. The Sergeant-at-Arms will make proclamation.

The usual proclamation was made by the Sergeant-at-Arms.

The managers on the part of the House of Representatives appeared in the seats provided for them.

The respondent appeared with his counsel, Messrs. Blair, Black, and Carpenter.

The PRESIDENT *pro tempore*. The Secretary will notify the House that the Senate is ready to proceed with the trial.

Mr. MERRIMON. I move a call of the Senate.

The PRESIDENT *pro tempore*. The Senator from North Carolina moves a call of the Senate. The Chair hears no objection, and the roll-call will proceed.

The Chief Clerk called the roll, and thirty-nine Senators answered to their names.

The Secretary read the Journal of the proceedings of the Senate sitting on Saturday last for the trial of the impeachment of William W. Belknap.

The PRESIDENT *pro tempore*. The Senate is now ready to hear the managers. Senators will please give their attention.

Mr. Manager KNOTT. Mr. President, if the court please, in resuming the remarks which it has devolved upon me to submit upon the question under discussion, I need not promise the court that I shall be as brief as possible. Even if I were in perfect health I do not feel that I am speaking for posterity, and consequently am under no temptation to talk until that audience shall arise. Moreover, the line of remark which I had proposed for myself has been so completely anticipated by the very able and carefully considered arguments of my learned colleagues that, fortunately for the court, there remains but little for me to say except perhaps to recapitulate some of the points and to elaborate to some extent a few of the suggestions so ably presented by them.

When the court did me the favor to adjourn on Friday evening in consequence of the physical indisposition from which I was then and am still suffering intensely, I was about to institute an inquiry suggested to me at that particular moment by the closing sentences in a paragraph which I had just read from Story's Commentaries on the Constitution, as to the *purpose* for which the remedy by impeachment was designed, with the view of determining whether the construction of the various provisions of the Constitution relating to that subject, proposed on behalf of the House of Representatives, was more consistent with that purpose than that insisted upon by the defense. As to what that purpose really was, I imagine there can be but little, if any, dispute. However much controversy there may be with regard to the character of the offenses for which an impeachment will lie, I apprehend there can be but little question that the object for which this mode of procedure was designed was precisely that stated by Judge Story, namely, to secure the state against gross misdemeanors in office.

The framers of our Federal Constitution were perfectly aware that the functions of the Government they were preparing to establish would necessarily have to be committed to those who would be subject to the same frailties and actuated, to some extent at least, by the same passions which influence the conduct of their fellow-men. They knew, moreover, that those who are called to fill the most exalted stations of public trust are frequently, if not always, under the strongest possible temptation to abuse the opportunities afforded by their official position for the promotion of their own aggrandizement, the extension of their own authority, and the perpetuation of their own power, besides being constantly subject to the suggestions of an ignoble appetite for illegitimate emolument. As wise and sagacious statesmen, therefore, fully appreciating the importance of securing every department of the Government from the contamination of official corruption and crime, they devised this mode of procedure as the most practicable and efficient method of preserving the purity and maintaining the integrity of those departments especially which were not designed to be under the immediate, direct control of the people through the ballot. This much I understand to be conceded by the honorable counsel for the accused.

But how was the end proposed to be attained? First, by making it peremptory upon the court by which a criminal official should be convicted on impeachment to remove him immediately from office; and this, say learned counsel, was the only purpose the framers of the Constitution sought to accomplish: "That the sole object for which the power of impeachment was given was removal from office." It seems that those wise and patriotic statesmen thought differently, however. They knew that if the process of impeachment went no further than to remove a criminal or corrupt official from office the whole proceeding would amount to nothing more than a puerile farce. They knew that the party convicted and removed might be immediately restored to the same or appointed to another and perhaps more important position by a corrupt or misguided patron, and to guard against any such possible contingency they went a step further and provided that the court might not only dismiss the delinquent from office but prevent him from again polluting the Government he had already degraded by disqualifying him to hold any office of honor, trust, or profit under it, either for a limited period or forever, as the court might see proper, and, to render that disqualification as complete and effectual as possible, exempted the party thus convicted and condemned from the general power of the Executive to pardon.

But was this all? Was the only purpose of this disqualification simply to preserve the Government from the danger to be apprehended from the single convicted criminal? Very far from it, sir! That in reality constituted but a very small part of the design. The great object, after all, was that his infamy might be rendered conspicuous, historic, eternal, in order to prevent the occurrence of like offenses in the future. The purpose was not simply to harass, to persecute, to wantonly degrade, or take vengeance upon a single individual; but it was that other officials through all time might profit by his punishment, might be warned by his political ostracism, by the everlasting stigma fixed upon his name by the most august tribunal on earth, to avoid the dangers upon which he wrecked, and withstand the temptations under which he fell, to teach them that if they should fall under like temptations they will fall, like Lucifer, never to rise again.

The real purpose of proceedings of this kind is presented so beautifully and so forcibly in a single paragraph in the opening speech of Mr. Whitbread upon the impeachment of Lord Melville, who, like the accused here, sought to evade the consequences of his crimes by resignation, that the Senate will pardon me if I read it. He says:

> And here let me observe that all prosecutions of this sort are instituted for the general benefit, and not with the view of harassing any private individual. All punishment is inflicted for the sake of example, and not for the purpose of personal vengeance.

Mark this:

> It is the *morals* of a country which in all these inquiries we ought to regard, and it is to this which every honorable prosecutor ought to look, and this every impartial court will respect.
>
> If I could employ the voice of an angel and render it audible to the remotest corners of the earth, I would caution every friend of virtue before he accepts of any great public engagement I would show him that the temptations are great; and I would invite him to attend to the punishment which would be the consequence of misconduct.

Punishment, sir! Punishment that public and official morals may be purified and preserved; not that a single individual may be harassed, but that the government to which every citizen looks for protection may be kept pure, uncontaminated, and worthy of the confidence of those who are subject to its authority.

Distinguished counsel in his argument the other day insisted very earnestly, and went so far as to cite the opinions of others equally eminent with himself to show, that the idea of punishment is not contemplated in proceedings of this kind. And, sir, I am glad to be able to admit that it is one of the most priceless privileges guaranteed to every citizen by the Constitution of the United States that he may not only entertain but freely express his own opinion upon every subject whatever, no matter who may differ with him. It is therefore not in the power of the Supreme Court to prevent the learned counsel from entertaining or promulgating a different view from that expressed by them in the case of Cummings *vs.* The State of Missouri, and re-affirmed in the case of Garland, however much they may regret his inability to concur in that opinion.

The court say in the case of Cummings, 4 Wallace:

> The theory upon which our political institutions rest is, that all men have certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; and that in the pursuit of happiness all avocations, all honors, all positions, are alike open to every one; and that in the protection of these rights all are equal before the law. Any deprivation or suspension of any of these rights for past conduct is punishment, and can be in no otherwise defined.
>
> Punishment not being, therefore, restricted, as contended by counsel, to the deprivation of life, liberty, or property, but also embracing deprivation or suspension of political or civil rights, and the disabilities prescribed by the provisions of the Missouri constitution being in effect punishment, we proceed to consider whether there is any inhibition in the Constitution of the United States against their enforcement.

But, sir, we have been told that "there were brave men before Agamemnon;" and it appears that there were learned and distinguished lawyers even before counsel were employed in this case who undertook to maintain the view expressed by the honorable counsel here. As far back as the celebrated Blount case, of which the Senate has heard so much during this trial, the same suggestion was made by counsel for the defense, and the argument adduced on that occasion was so eloquently and triumphantly met by Mr. Manager Harper and his reply thereto so pertinent to the remarks of counsel here, that I will read what he said:

> But the learned counsel for the defendant have told us that the power of impeachment is limited in the Constitution itself by the restriction which it imposes on the power of punishment. The power of punishment on conviction by impeachment is restricted, say they, to "removal from office and disqualification to hold or enjoy any office of honor, trust, or profit under the United States;" and it would be absurd to impeach, try, and convict a man who held no office from which he could be removed, and could, of consequence, be no otherwise affected than by a disqualification to hold in future offices which he, perhaps, never had a prospect of obtaining. Of this absurdity the Constitution cannot be supposed to be guilty; and therefore it could not have intended to subject to the power of impeachment any persons except those who actually hold offices and may be punished by removal.
>
> But where, Mr. President, did the honorable counsel for the defendant learn that disqualification to hold any office of trust, honor, or profit under the Government of our country is no punishment? Would either of those honorable gentlemen think it no punishment in his own case? There are no doubt many men indifferent as to offices of profit, and not ambitious of those of honor or trust. But to be held

up to our fellow-citizens as a person unworthy of trust, undeserving of honor; to be stigmatized by a solemn sentence of the law, pronounced by the highest and most awful judicature known to the Constitution; to be excluded by the voice of our country from all hope of participating in those rights, privileges, and advantages which are open to our fellow-citizens; to be disowned by our common mother as degenerate and unnatural sons, unworthy of her confidence; to be deprived, not only of her kindness and her favors, but even of the right which a good citizen holds dearest of all, the right of devoting ourselves to her service, of defending her in the hour of danger and distress—are these not punishments? I know not where the learned counsel learned that they are not; but this I know, that they did not learn it in their own hearts. Yes, Mr. President, a sentence of disqualification, pronounced by this honorable body in the face of the whole American nation, and on a charge of high crimes and misdemeanors by the representatives of the American people, is a punishment; and, as this punishment is applicable to persons who are not officers as well as to those who are, it follows that the power of impeachment, if its extent be measured by that of the power of punishment, is applicable to all persons, whether officers or not.—*Annals of Congress, Fifth Congress*, (1797–'99,) volume 2.

But, as to the end and final cause of all punishments, every member of this honorable court has long ago been advised when in his youthful days he conned over the pages of Blackstone. He says:

2. As to the *end* or final cause of human punishments. This is not by way of atonement or expiation for the crime committed, for that must be left to the just determination of the Supreme Being, but as a precaution against future offenses of the same kind. This is effected three ways: either by the amendment of the offender himself, for which purpose all corporal punishment, fines, and temporary exile or imprisonment are inflicted, or by deterring others by the dread of his example from offending in the like way.

There, sir, is the ultimate object to be reached by all such proceedings as this, and I would say to the learned counsel, now and for all, that they are dignifying their client far too much when they suppose that this impeachment was intended simply to harass *him*, simply to disqualify *him* from again contaminatin g the Government, if indeed he is guilty; and upon that I beg leave to say I would sedulously forbear to express any opinion at this time. The House of Representatives in sending these articles here had a far higher purpose in view. That purpose was the correction, the purification of public and official morals in this country; and who, sir, that has contemplated the frightful picture of crime and corruption so graphically and powerfully drawn by my distinguished colleague [Mr. HOAR] on last Saturday will deny that it is high time some such corrective process should be put in operation?

Now, sir, if it be true, as I have stated, that the object and design of proceedings like the present are not merely to remove a guilty party from office, not merely to disqualify him to hold any office of honor or trust or profit under the United States, but that it is designed as a great preservative means for securing the purity and honesty of official conduct on the part of all officers of the Government; if it is true that the several provisions of the Constitution relating to the subject of impeachment were intended to protect the Government from official corruption and crime, which if left unchecked would lead to its ultimate overthrow and destruction; if it is true, as it seems to me every rational mind must admit it is, that the only efficacy of those provisions is to be found in the rigid, impartial, certain, and inexorable enforcement of the penalties they prescribe, the question is whether they shall be so construed as to promote the object they were intended to accomplish in the amplest manner consistent with the language in which they are expressed, or whether they shall receive such a construction at your hands as will render them utterly nugatory and worthless.

That, sir, is the plain, simple question before you. Now, will this distinguished tribunal, this tribunal of statesmen, say that notwithstanding the Constitution vests in the House of Representatives the power to institute proceedings by impeachment, and clothes this body with full and complete jurisdiction to try all cases of impeachment; and notwithstanding the plain, obvious principle of law and common sense that when a person enters upon the duties of an office he assumes all the responsibilities of that office, criminal as well as civil—responsibilities of which he cannot divest himself except in pursuance of law—yet neither House can exercise its powers in a case of impeachment except at the option of the party accused? Will you say in the face of the intelligence of this age, and to the civilized world, that our institutions present such a ridiculous anomaly in jurisprudence, such a miserable, pitiable spectacle of imbecility as that?

Yet you must say so; the logic is inexorable; there is no escape from that conclusion, if you hold, as is maintained by the defense here, that a party may commit an offense while in office, and escape the penalty described simply by the act of resignation or by any other act of his except suicide.

But let us look a little more particularly to the two clauses of the Constitution from which this singular conclusion is sought to be deduced. As the Senate is already aware, the fourth section of the second article provides:

The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

The learned counsel consumed nearly two hours of this world's valuable time in a very labored though perhaps not an exhaustive rehearsal of the records of the convention which framed the Constitution to establish the proposition that the idea they meant to convey by the section I have just read was that no man should be impeached unless he should be in office at the time of his impeachment. He finally reached that conclusion and announced it, but by what process of logic I confess I was then and am still unable to appreciate.

If it be true that the framers of the Constitution did intend that no person should be impeached unless he should be in office at the time of the impeachment, learned counsel would have conferred a favor upon this honorable court and have contributed a great deal to the gratification of the unenlightened public if he had told us why they did not say so, why they did not express it in some clause upon the face of that instrument. For instance, when they said "the House of Representatives shall have the sole power of impeachment," why did they not add the restraining words to that clause, "but no person shall be impeached unless he shall be in office at the time?" Or, leaving that clause, when they came to the one regulating the judgment that should be rendered, why did they not say that "judgment in cases of impeachment shall be rendered against no person unless he shall be in office at the time, and no such judgment shall extend further than to removal from office and disqualification to hold office?" Or, if these two provisions had passed out of their minds when they came to consider the fourth section of the second article, and they still desired that the American people for whom they were preparing the frame-work of a government should understand that no man should be impeached unless he was in office at the time, why did they not annex the restraining words to that article, why did they not say, "but no person shall be impeached unless he shall be in office at the time?"

The framers of our Constitution were wise and patriotic as well as cultured men. They fully appreciated the magnitude of the work in which they were engaged; they knew that they were preparing a government not for a day, not for a year, but a government that should mold the destinies and affect the interests of a mighty people through long ages to come. They consequently weighed every word they used with the utmost care. So careful were they, in fact, that they even provided a committee on style and arrangement, to whose scrutiny every line and word and syllable of the Constitution was subjected, and whose careful supervision every provision it contains underwent before it was adopted. Would they have overlooked such a glaring omission as the argument of counsel implies? They were men with heads upon their shoulders, and if they had intended that no man should be impeached except he should be in office at the time, they would doubtless have said so in plain, unmistakable terms, or if they did intend it and did not say so, the learned counsel ought to have informed us why; because if there is a man upon the continent capable of giving that information I have no doubt he is the one and the only one; but inasmuch as he failed to do so, I take it for granted that he was simply mistaken as to the intention of the framers of the Constitution on that point. I take it for granted that the very fact that they omitted to make this restriction is conclusive that they did not intend that the power should be so restricted.

It will not do to say that the idea of impeaching a man after he was out of office was never considered by the convention at all; for, as my learned colleagues so clearly and conclusively showed on Saturday, that very question was under discussion when this identical proposition was considered. The question then was, not whether a man should be impeached after he was *out* of office, but whether the President should be impeached while he was *in* office. There was no objection anywhere, so far as I have been able to see, to the proposition that he might be impeached *after* the expiration of his term. But I submit, sir, that this section not only does not require, but it does not admit of interpretation. It is a plain principle of legal construction, as well as of common sense, that where words are so plain that their meaning cannot be mistaken, no interpretation is necessary or to be allowed. The words must be taken for just what they express and no more. This has been settled over and over again by the courts. Now, look at the language of this section. Is there anything dubious about it? Is there anything uncertain or mysterious about it? Is there anything connected with it that a wayfaring man, though a fool, may be mistaken about?

Examine it in what light you will and you cannot make it say more or less than it does. I care not whether the immediate controlling motive in its adoption was to provide a mode for the removal of a guilty official from office, or whether it was intended as a peremptory direction as to the judgment that should be rendered in case he should still be in office when convicted, it simply means that when any civil officer of the United States shall be convicted on impeachment for treason, bribery, or other high crime or misdemeanor he *shall* be removed, and that is all it means. Torture it as you may it is impossible to find in it the remotest insinuation that removal from office is the only object to be effected by impeachment, or that if judgment of removal shall be rendered unnecessary by the resignation or previous removal of the offender the Senate has no power to render a judgment of disqualification either limited or perpetual.

But, sir, it is said that this section should be collated with the seventh clause of the third section of the first article, and both construed together. Very well, let us do so, and what do we find then? We discover that the framers of the Constitution intended that you should have more than the mere power of a motion. We find that they did intend that there should be some other penalty for official crime than the mere removal of the offender from office, and that you should have power to inflict it, too; that you might disqualify him to hold any office of trust, honor, or profit under the United States. Now if it be true that the removal of the guilty official was the sole aim and object, the only purpose to be effected by impeachment, why did not the

learned counsel inform us why this provision authorizing disqualification was inserted here? I beg pardon, I believe he did undertake to explain that. He said:

I have attempted to show that the sole object for which the power of impeachment was given is removal from office.

There is another proposition which I intended to argue in that connection. The disqualification clause of punishment was evidently put in for the purpose of making the power of removal by impeachment effectual. After providing that the officers of the United States might be removed on impeachment, although the President cou'd not pardon the offender convicted and removed, yet if he could re-instate him the next morning he would have substantially the power of pardon.

Now, sir, if the convention intended by this power of disqualification simply to prevent the President from violating the Constitution by virtually ignoring the restriction upon his power to grant reprieves and pardons, if it was simply to prevent him from placing the convict back into the same office from which he had just been removed, as learned counsel suggests, can it be imagined that they were guilty of the supreme folly of permitting the guilty official to secure to the President the right to re-appoint him by resigning before impeachment and thus taking away your power to disqualify him at all? Did they intend to say that "we will prevent the President from making the power of removal a nullity, but we will leave that power in the hands of the guilty party himself?" Yet they must have so intended if the gentleman's theory is correct. For he could resign, no matter how guilty before impeachment, and thus not only destroy the power of the House to accuse but yours to try him, and thus be in precisely the condition to enable the President to re-appoint him without having to violate the clause of the Constitution respecting his power to pardon. I repeat, sir, were those wise men guilty of the supreme folly of leaving it in the power of the guilty party to do precisely the thing which counsel himself says they were endeavoring to prevent by this disqualifying clause? And besides, sir, as suggested by my learned colleague, [Mr. HOAR,] if this clause authorizing disqualifications was intended for the purpose indicated by counsel, and that alone, the provision would manifestly have been so framed as to disqualify the convict from holding the particular office from which he might be removed, and not from all offices whatever.

The learned counsel in his remarks the other day invoked the rule laid down by the Supreme Court in the Slaughter-house cases, 16 Wallace, page 36, which I propose to apply to the point I am now endeavoring to discuss, that we should take into consideration in construing the Constitution the facts of contemporaneous history, the circumstances as they existed at the time and before it was adopted. Let us look a little into the circumstances existing at the time and see if we cannot ascertain the true reason why the peculiar verbiage of this clause, which says that "judgments in cases of impeachment shall not extend *further* than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States," was employed.

Mr. MORTON. I desire to propound a question, which I will read, as I can do it better perhaps than the Secretary:

Whether in England a person who has been punished by the courts for crimes committed in office has, after retiring from office, been impeached and punished by Parliament, or where a person has been impeached and punished in Parliament, has he afterward been punished by the courts for the same offenses?

I should be glad to invite the attention of the honorable manager to that question.

Mr. Manager KNOTT. Mr. President, in answer to the question propounded by the honorable Senator from Indiana, I have to say that I do not know of any case in England in which a conviction had upon impeachment has been followed by a subsequent conviction for the same offense in a court of justice; nor do I know that where a person had been convicted in a court of justice he has afterward been impeached for the same offense. I have never examined the question with a view of ascertaining whether either of the cases supposed by the honorable Senator has ever occurred in England or not. I was, however, approaching that subject, and I think I shall show, whatever may have been the course of adjudication in England in the cases supposed in the honorable Senator's question, the difference between our own law and the English law with regard to impeachments, so far as may be pertinent to the point under discussion, and the reason for that difference.

When the framers of our Constitution came to provide a method by which the Government they were about to establish should be protected from official corruption and wrong, they naturally turned for a model to the country under whose laws they had been reared and with whose institutions they were familiar. There they found the process of impeachment complete; confined, however, to the punishment of political or state offenses to malconduct in office. Copying that model, as had been done in the formation of most of the State constitutions, they located the power of accusation and the necessary power of inquisition with that branch of the legislature emanating directly from and immediately responsible to the people at frequent and stated periods, as being most likely to watch their interests with the most jealous vigilance, while they committed the sole power of trial to that branch of the legislature which, from the nature of its organization and the relation it sustained to the Government and the people, would be most likely to render strict and impartial justice between the accusers and the accused.

When they came to look over the long catalogue of impeachments, however, which had taken place in the parent country, they found that while that mode of procedure had been resorted to mainly, as I have said, for the correction of abuses and the punishment of crimes in office, there had been an almost unlimited discretion exercised in the infliction of penalties upon those convicted. In some cases enormous fines had been inflicted; in other cases fines and imprisonment; in other cases, fine, imprisonment, and the pillory; in other cases death at the block. Choosing therefore, as they did, to remit the offender to the regularly constituted courts of justice for indictment, trial, and the ordinary punishment prescribed by the law applicable to each particular case, and resorting to impeachment only for a correction of official abuses and for the punishment of offenses affecting the purity of the Government by political ostracism, they determined that in this country there should be no more such penalties inflicted by a court of impeachment; that, whereas in England the high court of impeachment had plenary power and could reach not only the liberty and property but the life of the offender, here there should be by such a court no fine, no imprisonment, no pillory, no riding upon horseback with the victim faced to the horse's tail, as in the case referred to some time since by the learned counsel, Judge Black; no beheading upon the block—nothing of that kind; but as the object was simply to preserve the purity and maintain the integrity of the Government, the delinquent should be in the first place removed from office, and in the second place disqualified to hold or enjoy thereafter any office of honor, trust, or profit under the United States either for a limited time, or forever, as the court of impeachment might determine.

If I have stated the facts correctly, which I apprehend will not be disputed, there is no longer any mystery about the seventh clause of the third section of the first article. It was simply intended as a limitation upon the judgment that might be rendered, and not in any sense of the word to affect the jurisdiction of the court. The language is plain, simple, and easily understood:

Judgments in cases of impeachment shall not extend further than a removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Now take the two sections together, collated as they are by the counsel for the defendant, and do you find a solitary syllable even remotely intimating that your power to *try* is taken from you in a case where it is impossible to enforce or unnecessary to render that portion of the judgment which you would be obliged to render on conviction if the party were in office? To make this question somewhat more pointed and plain, suppose the framers of the Constitution had made the limit a little wider, and instead of saying that a judgment in impeachment shall not extend further than disqualification to hold office, they had added, after the words "disqualification to hold office," the words "fine and imprisonment;" could it be maintained then that a criminal official could oust the jurisdiction and escape being fined or imprisoned by resigning his office? Would you have heard learned and lengthy arguments here to convince you that because you could not remove the accused from office that therefore you could not fine him or imprison him? I can scarcely think that learned counsel would present such a proposition as they now do if the three words "fine and imprisonment" had been added to the clause under consideration.

But if resignation would not oust the jurisdiction of the court under the section with these three words added, by what kind of logic can it be said to oust it as the clause now stands? The same rules of construction would have to be applied in both cases.

But there is another principle of construction that should not be entirely lost sight of in considering the provision under discussion; and that is, in construing any law that requires or admits of interpretation, not only the object and purpose of the law must be kept constantly and distinctly in view, but the effects and consequences of the proposed construction in respect of that object should also be carefully considered; that is, will the construction proposed promote the manifest purpose intended, and make the law effective, or defeat the object of the law-maker entirely, and render the enactment an absurdity or a nullity.

Before proceeding to a direct application of this rule, however, I wish at this time to call the attention of the court to a brief recapitulation of the points presented and insisted upon heretofore by the House of Representatives, in order that they may have this rule clearly in view and be able to apply it as it should be. We have endeavored to show on the part of the House of Representatives that the real object sought to be attained by impeachment is not to wantonly harass or needlessly degrade any private citizen, but to preserve the purity and integrity of the Government, and to protect the interest of the people, for whose benefit the Government is established, by confining, as far as possible, the administration of its functions to honest and reputable officials; that that object was sought to be effected by the framers of the Constitution, first by providing peremptorily for the prompt removal of the corrupt and convicted wrongdoer from the office degraded and polluted by his criminal malversation, and second that he may be disqualified, either forever or for a limited period, to hold any office of honor, trust, or profit under the Government whose escutcheon he had stained and whose efficiency he had impaired; thus not only placing it beyond his power to repeat his stabs at the vitality of the state in positions which his con-

viction of official crime has shown him totally unfit to fill, but exhibiting a striking and conspicuous example of the certain and inexorable consequences of official malversation.

In harmony with these purposes and in order to render the means for their accomplishment completely effectual, we maintain that when a person enters upon an office he assumes all the responsibilities pertaining thereto, criminal as well as civil, and cannot divest himself of them by any act of his own, but must continue under those responsibilities until discharged therefrom according to law; that the very moment he commits an impeachable offense he becomes liable to impeachment; and, as there is no provision in the Constitution exonerating him from that liability until his conviction or acquittal on impeachment, it must continue, notwithstanding the termination of his official service, whether by resignation, removal, or lapse of time.

This construction, and this only, we contend can give full and complete effect to the manifest intent of the Constitution with regard to the proceeding by impeachment. On the other hand, we maintain that the construction claimed by the defense, that a guilty party can deprive the House of Representatives of its prerogative to accuse or this Senate of its jurisdiction to try an impeachment, is simply to render the provisions of the Constitution relating to the subject a ridiculous absurdity and to stultify the framers of that instrument.

In the first place it should be remembered that the right of any civil officer of the United States to resign his office at any time is absolute and unqualified. The mere formal acceptance or rejection of his resignation does not in the least affect its validity. He may be guilty of crime in office and can resign before he is suspected of its commission. He can resign after his detection and before his accusation by the House of Representatives. He can take his chances and resign after his impeachment and before his arraignment; or he can resign after his arraignment, he can resign after the evidence is heard, and he is as much out of office as a thousand Senates could put him out by judgment upon impeachment, so far as the mere amotion from office is concerned.

This is the view of my colleagues and myself, it is admitted by counsel, and it is sustained by judicial decision in the only case in which the question has come under judicial review, to my knowledge, in a Federal tribunal. The court said in the case of the United States *vs.* Wright, McLean's Reports, volume 1, page 512:

> There can be no doubt that a civil officer has a right to resign his office at pleasure; and it is not in the power of the Executive to compel him to remain in office. It is only necessary that the resignation should be received to take effect; and this does not depend upon the acceptance or rejection of the resignation by the President.

The House of Representatives is frequently composed of very enterprising gentlemen, notwithstanding it may require a steam-elevator to bring them up to the level of the contempt of some of the learned counsel. Numerous instances in their past history might be adduced to show their energy in the pursuit of useful knowledge. But pretermitting the mention of all examples of such enterprise at this time, suppose they should set themselves seriously to work to solve the great problem in fiscal science which has so long excited the curiosity and engaged the ingenuity of the American people; suppose they should undertake to determine how it is that an average patriot of moderate means who devotes his gigantic talents to the service of his country upon a salary of $5,000 to $8,000 a year can maintain an establishment in a style of luxury and magnificence that our imperial visitor might envy, and still be able to invest at the end of a few years $100,000 or $200,000 in the remunerative stock of some profitable corporation. Suppose that in the prosecution of that desirable information they should accidentally unearth some plodding public servant steeped to the very eyes in corruption, loaded down to the very guards with official pillage. As a matter of course he would be instantly impeached by the unanimous vote of the House in the name of themselves and of all the people of the United States; the damning catalogue of his crimes would be set out in appropriate articles in the stately phrase of legal diction, interspersed and ornamented with the choicest flowers of a florid rhetoric. Managers are appointed and appear at the bar of the Senate, looking as solemn as the pall-bearers at a rich man's funeral; proclamation is made and the defendant appears surrounded by the most distinguished counsel the continent can afford, the latchets of some of whose shoes an average member of the House of Representatives is not worthy to touch with a ten-foot pole. Witnesses are brought from every part of the country. Day after day, week after week, and month after month is consumed in their examination. The argument commences. Counsel for the accused electrify the Senate with bursts of eloquence almost sufficient to rekindle their wonted fires in the slumbering ashes of Sheridan and Burke. Nevertheless the Senate at last finds the defendant guilty by a unanimous vote; notifies the House of Representatives that on a certain day it will proceed to judgment, and adjourns. The day arrives. The House of Representatives, headed by their Speaker and Sergeant-at-Arms, make their appearance. Silence is commanded on penalty of fine and pain of imprisonment. The chivalry and beauty of the capital, collected in the galleries, look down in breathless awe upon the august scene transpiring below. The silence, profound as the hush of death, is at last broken by counsel for the accused, who rises and informs the Senate that the defendant last evening resigned his office, and your jurisdiction is gone, like Othello's occupation. Senators look around on each other in blank amazement at the singular and sudden *denouement*, until some one less stunned by the announcement than his fellows suggests "that this court do now adjourn *sine die*." The motion is carried unanimously, and the curtain descends upon the last act of the ridiculous farce, while the House of Representatives "retires to slow music."

Now, I ask you if this proceeding, which you and I and all of us have been taught from our infancy to regard as a great constitutional remedy, can be reduced to such a senseless pageant, such a ridiculous, miserable, contemptible farce as that I have attempted to describe? Yes, sir, it is, if the theory presented here by the defense be true, because there is no limitation upon his right or power to resign; and if his resignation can oust you of jurisdiction at all, it can do so if made at one time just as well as another. If you cannot pronounce any judgment except a judgment to remove the person convicted from office, to be followed in your discretion by the judgment of disqualification, as claimed by the defense, your powers are taken away just as effectually by a resignation made ten minutes before you render your judgment as if made before a single article was drawn or even before his guilt was suspected.

The theory and logic of the defense is that, having removed himself from office, your power to enforce the first part of the judgment is taken away or has become unnecessary; therefore you cannot pronounce the other and more important sentence of disqualification! There is the logic, and I have endeavored to give you an illustration of the theory. I apprehend, however, that the highest tribunal in the country or known to the Constitution will scarcely construe its own functions into such a ridiculous and disgraceful absurdity.

But it may be said, if the theory of the House of Representatives in this case is correct, that a man may be impeached and removed from an office in which he has done no wrong for misdemeanors committed while in some office he may have previously held. Very well, sir, suppose it is so, ought it not to be so? I think I can suggest a case in which it would not only be considered proper, but eminently necessary, if not absolutely indispensable. Before doing so I will invite your attention to the first section of the third article of the Constitution:

> The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Now, suppose that at some period in the distant future a vacancy should occur in the office of Chief Justice of the United States, and, what would not be at all improbable, that the then acting Attorney-General should be promoted to fill the vacancy. Suppose, moreover, that from the moment of his confirmation by the Senate, his private conduct, as well as his official action, may be as pure as the icicle—

> That's curded by the frost from purest snow,
> And hangs on Dian's temple.

He may be a perfect model of private morality and the paragon of official purity. But suppose it should transpire that while in the occupancy of the former office he was larded all over with bribes, festering with corruption; guilty of having embezzled thousands and tens of thousands of the public money; the patron and emissary of thieves and cut-throats, who were in the habit of regularly dividing with him the ill-gotten booty of their nefarious calling. Suppose that his pals should turn upon him like the hounds of Acteon upon their master, and disclose evidence sufficient to show his guilt to the exclusion of a reasonable doubt, and that he should be indicted, tried, convicted, and sentenced to the penitentiary. Now, it will doubtless occur to Senators that the silk gown of the judge would be a little incongruous with the zebra uniform of the convict. It would not perhaps be a source of a great deal of pleasure to an American Senator to point out to a distinguished foreigner the unostentatious dress and retiring habits of the chief judicial officer of his country. It would certainly be a little inconvenient, not so say somewhat humiliating, to the pride of the American citizen to have him remain there during his whole term—perhaps for twenty years—occupying the position and entitled to the emoluments of the office of Chief Justice of the Supreme Court of the United States while breaking rock in a State prison? But how would you get him out? It may be said that he could be impeached for misdemeanor in office for not appearing upon the bench and performing his duties at the regular terms of his court as required by law. Grant that; but carry the case a step further. Suppose the statute of limitations had barred a criminal prosecution before the ordinary tribunals of the country, so that the impediment of imprisonment would not be in the way of the discharge of his duties as Chief Justice. Must the highest office known to our judicial system be polluted forever by the presence of a known felon? I imagine that if such a case should actually occur the Senate would have very little hesitation in sustaining its jurisdiction. You may say it is an extreme case to suppose, but cases fully as remarkable have more than once occurred in the history of the human family.

The honorable Senator from New York [Mr. CONKLING] on Saturday propounded a couple of questions which courtesy to him requires should receive a direct answer. My colleagues inadvertently overlooked them and have requested me to answer them as I am able:

> 1. If two persons guilty of crime in office cease to be officers at the same time, one by removal and the other by resignation, is one rather than the other subject to impeachment afterward? If a distinction between the two cases exists, please state it.

As to my single self, I say no, sir! It is the guilt that gives you jurisdiction; it is not the person; it is his status at the time he committed the offense, and not his position at the time of the trial. You get at once the jurisdiction of the case on the commission of the offense, and it is no difference, therefore, whether he go out of office by resignation or whether he be removed from office by a superior power; not, of course, upon impeachment. So I say, so far as I am capable of discerning, there is no distinction in the cases. The power to disqualify for the preservation of the Government is as perfect and complete in the one case as it is in the other.

"Second, is a private citizen liable to impeachment under the Constitution of the United States?" I believe that my learned colleague [Mr. JENKS] on Saturday elaborated that proposition; so that perhaps it will not be necessary for me to say anything further in relation to it except this: It does suggest to me to say to the learned counsel that he may with perfect assurance dismiss now and forever the gloomy forebodings which seemed to haunt his imagination the other day. The question is not, as he supposed it, whether this Senate can impeach forty millions of people, men, women, and children. I can assure him that there is not the slightest foundation for his apprehension that impending ruin and destruction hang like the sword of Damocles over the head of every man, woman, and child in the United States. He is entirely mistaken as to the question pending here. That question is simply whether a guilty official can resign his office, and by that act rob the House of Representatives of its prerogative to impeach him and take away the jurisdiction of the Senate, and thus escape the penalty due to his crimes? I will say to him, moreover, and through him to that large and respectable class of my fellow-citizens who need his eminent services in other tribunals, that they may dismiss all fears that if the jurisdiction is sustained in this case impeachments will be so frequent that he will be employed during the remainder of his natural life defending cases of that character in this court. I do not know that anybody in the House of Representatives even suspects that there is to be any other impeachment during the present Congress than the one here pending. If the learned counsel knows of any other Cabinet officer who is making preparations to flee the wrath to come, who is folding his tents, like the Arab, to steal quietly away and dodge the jurisdiction, he has more information I am sure than any gentleman of the House of which I am an humble member. He will have plenty of leisure from his duties in this forum to practice law in the Supreme Court, and you, Senators, will have an abundance of time to transact the ordinary legislative business of the country.

My attention is also called to a question propounded by the honorable Senator from Oregon, [Mr. MITCHELL:]

> The Constitution provides that when the President of the United States is tried on impeachment the Chief Justice shall preside. Suppose a late President were impeached for high crimes and misdemeanors committed while President, and presented at the bar of the Senate for trial, who would preside, the Chief Justice or the President of the Senate?

I suppose if such a case as that were to occur, and the question should be presented at this bar in a practical shape, there might be two opinions very plausibly urged. One party might very forcibly insist that the Chief Justice should preside because the Constitution says so. The other party might contend that there is no necessity for that rule, the reason of the rule having ceased, that reason being that if the Vice-President were to preside it might afford him an opportunity, or at least the temptation, to change the result of the trial, and thus perhaps place himself in a higher office. As to myself, while I would not hesitate one moment to say, as the venerable John Quincy Adams did, that his amenability to impeachment goes with him as one of the responsibilities he took upon himself when he entered that high office to the end of his life, I would be, if a member of the Senate, perhaps equally as clear that the Chief Justice ought to preside, according to the letter of the Constitution. But that is a question of practice and convenience. The Senate would settle that matter, and from their decision there could be no appeal. There is another case not provided for, and that is, who shall preside in case the Vice-President is upon trial? Yet I suppose that no one would pretend that the Vice-President could not be tried because that is an open and unsettled question. These are simply matters that will have to be settled by the Senate when the exigency arises.

Now, Mr. President and Senators, I have said all and perhaps more than I ought to have said upon the question under discussion. I am content to leave it with you, perfectly confident that no large number of right-minded people will accuse the House of Representatives of being either fools or traitors for sending it here, or denounce you for cowardice or corruption, decide it as you will. Whatever your decision may be I trust it will be such as to redound to your own credit as jurists and statesmen, as well as to the permanent good of our common country. "I have neither action, nor utterance, nor power of speech to stir men's blood;" and if I had, I have no appeal to make to your passions or your prejudices. I cannot forget that I stand in the presence of the most exalted tribunal known to the Constitution of my country, sitting to determine one of the gravest questions ever submitted to a human court; not for this hour, but for all time; not for the weal or woe of this individual accused, but for aught I know for the good or ill of generations yet unborn. I would not therefore, if I could, obscure a single ray of the pure, bright, light of truth and reason in which that question should be viewed. I would not, if I could, by any undue influence cause the balance which should here be poised by the firm, steady hand of rigid and impartial justice to change "but in the estimation of a hair."

I know not whether the inexorable pen of history will note the transactions of this hour, but if it should, I trust the record will be in characters imperishable as the rock-ribbed hills that the American Senate, unbiased by personal or party considerations, uninfluenced by private sympathies or popular prejudice, had the sterling virtue to administer the law. In this sentiment I am sure I meet with a cordial response in the bosom of the very distinguished counsel who is to follow me, whose own contribution to the juridical literature of our country—and he will pardon the impulse which inspires the utterance—and whose manly, fearless, unbought vindication of the majesty of that same law have achieved for him a memorial in the affectionate veneration of his country more priceless than sculptured marble and, I trust, more enduring than monumental brass.

Mr. THURMAN. I should like to know whether the counsel who is next to speak would prefer a recess to be taken now or at the usual hour of two o'clock.

Mr. BLACK. I prefer to go on, I think, now.

The PRESIDENT *pro tempore*. The Senate will now hear the counsel for the accused close the argument. Senators, please give attention.

Mr. BLACK. Mr. President and Senators I feel the whole weight of the responsibility cast upon me by being required to close this argument. I do not mention this as an excuse for the imperfections of the argument you are about to hear, but only to ask that if I in my embarrassment or my haste or my imprudence should happen to say something which I ought not to utter, you will visit the consequences upon my head. Spare my client; for he has already suffered enough for the sins of other people.

Like my friend who has just concluded, I feel absolutely sure that every member of this great tribunal desires to decide this cause as it ought to be. It is a supreme necessity that the law should always be followed by those who have its administration in their hands. This is particularly true of the fundamental law; and if there be any part of the Constitution itself which is more important than another, it is that portion which marks the dividing line between the powers, or what our friends call the prerogatives, of the Government on one hand and the rights of individual citizens upon the other.

You know all this as well as I do. I need not say it. If it were otherwise; if you were indifferent whether you decide rightly or wrongly, nothing that I could say would have the effect of waking you up to a sense of your duty and responsibilities. I shall therefore come directly and at once to the subject before you without preface or introduction.

There are three questions which have been raised:

First. General Belknap having relinquished his office by a resignation which the President accepted before this proceeding against him began, did he thereby become a private citizen so as to exempt him from the impeaching power of the House and the jurisdiction of the Senate?

Second. If his resignation would have that effect as a general rule, is his right to plead it here gone when the House shows that he resigned under apprehension of impeachment and for the purpose of avoiding it?

Third. Can an officer who is impeached while in office resign in the midst of the trial and so stop the proceedings? This is a mere speculative point, not even analogous to any question which actually arises. It must be perfectly manifest that when we show the total and original want of jurisdiction over the party we prove nothing from which it follows that the same party could by his voluntary act defeat a jurisdiction which has already attached and to which he has submitted himself. There being no fact in the case upon which this question can be raised, it would be improper for you to determine and wrong for me to discuss it. If any one interrogates you upon it in your judicial capacity, your answer will be, or it ought to be, what Sir Edward Coke gave to the king when he assembled the twelve judges and demanded to know the determination they would make in a certain case where the Crown had an interest. Eleven of the judges answered, "We will of course decide as your majesty shall be graciously pleased to desire;" but the great chief justice stood up and said, "When the case arises in the ordinary course of procedure and is debated before me, I shall then endeavor to do what it may seem fit and proper for a judge to do. Further than that I decline to pledge myself." Coke was honored as you will not be honored, by being deposed from his office, by being compelled to pay a fine of £10,000, and persecuted generally during the whole of that reign.

This last question, therefore, I shall not trouble you or myself by discussing. The second needs very little attention. The strain of the case is upon the first, namely, whether a man who has resigned his office is to be still accounted a public officer for all the purposes of an impeachment against him by the House and before the Senate. On that subject, of course, we have the negative; and I will try to maintain it if I am able to do so.

It is not necessary that I should repeat the arguments which you have already heard from my colleague; it would be a waste of your time. I suppose I ought to answer the arguments of the managers; and yet there are some things said by them which I cannot reply to. The honorable manager who spoke last on Saturday made the most elabo-

rate and carefully prepared oration that it has ever been my good fortune to hear. Of course it excited my admiration, as it did yours; but it was filled for the most part with the bitterest abuse of the accused party and of other persons not here but absent and undefended. I cannot have any objection that that gentleman should play the part of Cicero in this proceeding; but I do protest that he has no right to make an imaginary Mark Antony out of General Belknap for the mere purpose of having a subject for his philippic. He not only berated him as guilty of everything set forth in the articles, but he goes out of his way and asserts that the whole country is full of public and notorious corruption which disgraces her in the eyes of all the world. Judges, members of Congress, city corporations, and railroad companies share with one another in the general infamy, and he gives the scandalous hearsay that the President's intimate friends and companions are tainted with the same base crimes. By his account, it will be more tolerable in the day of judgment for Sodom and Gomorrah than for these cities whose wickedness he has been watching. Like Lot, his righteous soul has been vexed from day to day by these iniquities. According to him, all classes of this country are weltering together in one great mass of moral putrefaction. He scoffs at the argument of my colleague as "the jeers and the sophistry of the criminal lawyer." If he were a criminal lawyer, which I suppose by his sneer that he is not—if indeed he were any lawyer at all—and go in a court of ordinary jurisdiction, upon pretense of discussing questions of law, and would attack the opposite party with unfounded abuse, and at the same time give everybody else a lick with the rough side of his tongue, he would be gently reminded that he was traveling out of the record, and if necessary he would be brought back to the point with rather a sharp turn.

I know not what may be your rule when you are sitting here in the exercise of your ordinary function; but it seems to me that when this body resolves itself into a judicial tribunal, it ceases to be a proper place for that kind of oratory which "splits the ears of the groundlings" and calls down the claps from the galleries. If the gentleman desires to show his virtue and the wickedness of other people, let him go to the hustings and call his beloved constituents around him. There his sonorous periods and his well-poised antitheses would excite universal admiration; his friends shout themselves hoarse, and throw up their caps as if they would hang them on the horns of the moon. But this question of law is not to be determined by the vituperation of the managers. It may be that this is not a very good world. It is generally supposed that there are things in it which need correction; but the gentleman has no right to throw those things into the balance here. He may want a victim, as he does no doubt, and if he cannot get one according to law so much the worse for the law, for he intends to have one anyhow. I think he believes in the maxim that it is better ninety-nine guilty men should escape than that one innocent man should suffer; but he seems to think that more than ninety-nine have escaped already, and that the turn of the innocent man has come.

It is not a part of my duty to examine in detail the authorities which have been cited on both sides; but I shall refer to them in a somewhat compendious way, merely that they may be recalled to your memory.

Blount's case has been much spoken of. Why it should be so I am at some loss to say, except for the purpose of showing that something can be said on both sides of this question. But that does not advance us one step in the argument, since this case itself furnishes you with a demonstration that a great deal can be said on both sides. My colleague who opened the case thought that because the judgment of the courts sustained both the pleas it must be regarded as a decision of the point raised by the second as well as the first. As between the parties that is the technical effect of the record; but I cannot conceal from myself that the turning-point of that case was that Mr. Blount, being a Senator, was not a civil officer and never had been, and therefore it made no sort of difference whether he had resigned or was still in office.

If the mere *dicta* of counsel can be considered a thing of value, then why did not our friends on the other side take some notice of the opinion expressed by Luther Martin on the impeachment of Judge Chase? He was at that time the acknowledged head of the American bar, and declared it to be his unqualified judgment (which was not contradicted by anybody there) that a person after going out of office was not liable to impeachment for anything done while he was in. Distinguished members of this court, many of them on the most important occasion of their lives, the impeachment of President Johnson, expressed that doctrine deliberately, simply, and plainly. The managers ignore that authority, and think it amounts to very little in comparison of what the counsel on the one side said in Blount's case in face of a flat contradiction from the other side. They do introduce one *dictum* pronounced in another place, and they make much of it. The manager from Massachusetts cited John Quincy Adams, and coupled the citation with as lofty a eulogy as one man can make upon another. I, of course, do not detract from the merits of that distinguished man. He must have had some attractive qualities, since he was considered by a very large number of his countrymen fit to be set up as a candidate for President against him who was then the foremost man of all this world. But the public history of Mr. Adams shows that he of all men that ever lived was the least reliable upon a question of law. He was too fond of personal controversy to care which side he took. It appears from the citation itself that the general opinion of the House as expressed by other members was that the power of impeachment applied only to persons actually in office. Mr. Adams of course opposed what everybody else believed to be true. Nothing indeed would have given him greater pleasure than to be impeached. It would have given him an opportunity to come over here and lay about him right and left. His organ of combativeness was always in a state of chronic inflammation. He enjoyed nothing so much as he did the *certaminis gaudia*—the rapture of the strife. That was the strongest passion of his nature. He tried to provoke a motion for his own expulsion from the House, and that failing, he presented a petition from some outside enemy to expel himself.

Another authority from the House of Representatives is cited by one of my colleagues. But I confess I do not claim much by it. The honorable manager who argues questions of jurisdiction in the form of philippics against the accused, declared when this question was first mooted that the House had no power and the Senate no jurisdiction. We would regard that decision as very important if it had not been reversed by the same high authority that made it.

It would be a great prop to our argument if he who put it under us had not afterward knocked it away. But he had a right to change his opinion. No man is bound to live and die by the notion he may take when a question like this is first presented to his mind, and no one here or anywhere has a right to say that the change was not a conscientious one, or that he professes any opinions now which he does not honestly and sincerely entertain. It is true that the change occurred under circumstances of excitement and political terrorism not very conducive to the formation of a sound judgment. He was surrounded by a conflagration of anger and animosity. Paley was right when he said that he must be either more or less than a man who refuses to kindle in the general blaze. It is some honor to that gentleman that he was the last one to take fire, though when he did begin to burn he proved to be rather more combustible than any of the rest. [Laughter and applause in the galleries.]

Mr. DAVIS. I call attention to the disorder in the galleries.

The PRESIDENT *pro tempore*. The Chair will formally remind the occupants of the galleries that applause, either for or against, is out of order. He trusts that due deference will be paid to the Senate; otherwise, the Chair will be compelled to vacate the galleries.

Mr. BLACK. We usually expect to find something on subjects of this kind in the Federalist, showing what was in the minds of those who urged the adoption of the Constitution upon the States and the people; and we do find a little there, not very much. Hamilton says in one of his papers that this power of impeachment gives an "awful discretion" to the Senate, and calls the power in the House of Representatives "a national inquest upon the *public* men of the country;" from which the inference is a perfectly fair one that he did not think the House of Representatives could throw its drag-net over the whole country and draw in every man, whether he was a public officer or a private citizen, provided he had once held an office. There is no way that I can conceive of in which they can make out that Hamilton was wrong about that or that his remarks cover a case like this except in the way taken by the chairman of the managers when he laid down the broad doctrine that once an officer always an officer. But that cannot be possibly true. When the gentleman [Mr. LORD] crossed the bar and told me, with a severe countenance, that I was still a public officer, it did not alarm me in the least, because I had a perfect inward consciousness that I was not and had not been for fifteen years in the public service. I was and I am a private citizen, clothed with all the immunities and privileges of a private citizen; and, what is more, I can assure the gentleman that there is a fair prospect that I shall, if I live, continue to enjoy that inestimable blessing for a good while to come.

The debates in the convention have been carefully eviscerated by my two colleagues, and it would be gilding refined gold for me to go over the argument which they have made. Suffice it to say that there is not in the whole of them a single trace to be found of any such notion as that which is now urged by the managers.

There is no contemporaneous exposition of the Constitution which favors their view. The debates in the State conventions which adopted the Constitution I would have thought might contain something upon this subject. Perhaps they have not been very fully examined. But there is one remark made by Governor Johnstone, of North Carolina, a man whose blood and judgment were so well commingled that his opinion deserves great attention; a simple statement of his own views on this subject that is most impressive and most direct. Among all the old writers on this subject nothing is clearer, more impressive, or more direct than what he says; and here it is:

> I never thought that impeachments extended to any but officers of the United States. When you look at the judgment to be given on impeachments, you will see that the punishment goes no further than to remove and disqualify civil officers of the United States who shall, on impeachment, be convicted of high misdemeanors. Removal from office is the punishment, to which is added future disqualification. How could a man be removed from office who had no office?—Fourth volume *Elliot's Debates*, page 35.

Three distinguished jurists of this country have written elaborate books on the Constitution: Rawle, Sergeant, and Story. Sergeant says absolutely nothing about this question; it does not seem ever to have been raised in his mind. Rawle says what is the same as nothing. In describing who are subject to impeachment he says it applies to officers *or* those who have been in office. If he had said it applies

to officers *and* all those who have held office heretofore it would have been something in their favor; but the grammatical construction of the sentence shows that he intended to be as indefinite as possible. But Story is outspoken and plain; you cannot doubt what he says. It applies, in his judgment, only to persons in the actual possession of offices.

We have, then, to support our view all the jurists, statesmen, and text-writers, except the counsel on one side of the Blount case and John Quincy Adams, whose spirit of universal contradiction drove him to the other side. Such also has been the uniform practice. We have had several great political revolutions in this country, when the party previously occupying the seats of power have been driven out with the wrath of their victorious enemies burning after them. As they came in they were not sparing of their charges. Treason, corruption, and other crimes and misdemeanors were freely asserted. Yet it does not appear to have ever entered into the head of any one that the party coming in could subject their displaced opponents to the power of impeachment. It is impossible to account for this without supposing a universal opinion that no such power existed.

That is not all. There have been a great many particular cases in which it was thought desirable to remove judges, who could be removed in no other way. Investigations have been commenced in the House of Representatives for that purpose; and whenever a judge, pending the investigation, has resigned his office, the prosecution was dropped.

Most of the States have provisions in their constitutions either exactly like that in the Constitution of the United States or so nearly resembling it that a construction of one is a construction of the other; and this is notably true of Pennsylvania and New York.

In the former State, while instances have been numerous in which impeachments were threatened or investigations begun with intent to impeach, a resignation of the obnoxious officer always stopped the proceeding. I think I know that this practice was founded in a belief universal among judges, lawyers, legislators, and every class of public men, that the power did not belong to any branch of the Government after the party accused went out of office. In New York the power was not only never claimed, but it was expressly and most emphatically disclaimed on several memorable occasions. It was admitted not to exist in Barnard's case, in Cardozo's, and in Fuller's, and it was practically acted upon. I do not say that those decisions are binding in any sense which compels you to follow them. If you think that they were wrong, that they were not according to the constitution of that State, or agreeable to the Constitution of the United States, it would be perfectly proper for you to say so and act according to your own convictions, treating this as a case of the first impression; but when you consider all the circumstances attending them, the character of the committee and of the House of Representatives, which declared that to be the law, those decisions are entitled to great weight and respect; and how they can be totally disregarded is what I do not understand, unless you can find some reason for doing it, which to me is, at present, incomprehensible.

I believe that what I have said of New York and Pennsylvania is true of every State in this Union where they have constitutions which upon this point are like that of the United States, and that in no one of them has there ever been an attempt to make any private individual, or any one who has become a private individual by a resignation, amenable to the jurisdiction of the senate or subject to the power of the house by way of impeachment.

Some of the States—as, for instance, New Jersey—have changed their constitutions and put a provision in which authorizes the impeachment of officers for a limited time after they have retired. That shows that when the amendment was added it was believed that the power could not exist without an express and special grant.

Mr. THURMAN. I move that the Senate sitting in the trial of this case take a recess for twenty minutes.

The motion was agreed to; and (at one o'clock and fifty-four minutes p. m.) the Senate sitting for the trial of the impeachment took a recess for twenty minutes.

The PRESIDENT *pro tempore* resumed the chair at two o'clock and fifteen minutes p. m.

Mr. BLACK. Mr. President and Senators, as might be expected, there are no judicial authorities to cite upon this subject. The question that you are now considering could not arise directly in the courts, and I believe it has never been collaterally drawn in question. The military cases have no application, inasmuch as the Constitution authorizes a trial by court-martial in all cases arising in the land or naval forces. It was therefore perfectly competent, under the Constitution, for Congress to declare as it did that all officers might be tried by court-martial within two years after their resignation. Remember that the jurisdiction of courts-martial depends upon the nature of the *cases*, and not, like the power of impeachment, on the *status* of the party accused.

The British precedents have less authority and less pertinence to this subject than anything that has been cited in the course of the debate. We acknowledge that the power of Parliament in that country is unlimited, and for that very reason there is no resemblance, except in the name of the thing, between impeachment here and impeachment there. The great purpose and object of our Constitution was to protect our people against the power that had been so much abused in England. The omnipotence of Parliament reached to every subject of the realm, to everybody except the supreme executive magistrate, and a power kindred to it, though not called by the same name, was actually exerted in one case upon the King himself. It might take for its victim a peer or a commoner, a prince or a peasant, a priest or a layman, freeholder, cocman or locman, merchant, mechanic, or sailor, and try him for any offense. It is true that they did not often trouble themselves with the trial of any except political offenders, but they were not restricted by any law to that class of cases. Nor were they limited in their judgments. They could hang and quarter a man whom they had convicted, behead him, set him in the pillory, brand him, maim him, imprison him for life, fine him to the whole extent of his estate.

Out of this boundless ocean of power our ancestors took the smallest possible quantum and with many misgivings, and after imposing careful restrictions upon its exercise, they lodged it here in default of some better place to put it. Would you sound the limitless depths of the sea and measure all its vast circumference to ascertain the dimensions of the drop which you hold in the hollow of your hand? If you can do that with respect to the persons who are subject to the power, then you must also do it, or, at least, you may as well do it with regard to the sort of judgment that you will pronounce. If General Belknap, after he has resigned his office of Secretary of War, can be made amenable to it because Bacon was convicted after he surrendered the great seal, then you may put him to death because Stafford was hanged and quartered, or you may set him on the pillory because that was the punishment inflicted on Floyd.

When I heard these cases thus carefully collated, and cited, and laid before you, I could hardly make up my mind what it was that the gentlemen would be at. Of course I dare not call their production of them an absurdity, when I recollect who it is thinks them very sensible and proper; but I may say this, at least, that I cannot understand the logical make-up of the mind which undertakes to measure the limitations of one thing by laying down beside it another thing which confessedly has no limitation at all.

But you may say what you please about the authorities; you may give what weight you like to the *dicta* of counsel at one time or another; you may adhere or not adhere to the doctrines which you yourselves, or some of you, have propounded before; you may give a great deal of weight, which I do not give, to British precedents and military cases, and the practice of the States. You may infer nothing from the uniform practice. You may turn your thoughts away from all constructions. But you cannot disregard the Constitution itself, which speaks in language too plain to be perverted by ingenuity or obscured by sophistry. That great instrument demands not only the implicit submission of our minds to its supreme authority but it claims our profoundest respect as the work of the greatest and best men of their own age or any other. This part of it was not made to promote the interests of a dominant faction or to gratify the passion of an hour; not an amendment proposed in malevolence and carried through the forms of adoption by force or fraud; but one of those free instiutions meant in good faith by just and true men to serve the high objects recited in the preamble. It deserves the eulogium which Bacon pronounced on the laws of Henry the Seventh:

> Deep, not vulgar; not made upon the spur of a particular occasion for the present, but out of providence for the future, to make the estate of the people more and more happy, after the manner of the legislators in ancient and heroical times.

When you approach this part of the subject, you are compelled to look up with an awful reverence, akin to that which Moses felt when he came up to receive the law out of the burning bush: "Put off thy shoes from off thy feet; for the place whereon thou standest is holy ground." Absolute and implicit obedience to this instrument constitutes the highest obligation of every public man. It is the true test of all patriotism; for the country says to every citizen what the founder of Christianity said to his disciples, "If ye love me, keep my commandments."

But before I call your attention to the words of the Constitution, let me speak about the second proposition of our adversaries, this being, as I think, the proper place to notice it.

Their second replication concedes for the purposes of the argument the general principle that a person out of office can not be impeached. But they insist that if he went out by a voluntary resignation with intent to avoid a threatened impeachment his liability is not changed. In other words, the legal effect of his resignation depends, not on the fact itself, but on the motive which led to it. They do not aver that he fraudulently evaded the jurisdiction or that he and the President formed an unlawful conspiracy, the one to resign and the other to accept the resignation, but without impugning the propriety of their acts they yet deny their validity. We maintain that a resignation when duly accepted does *proprio vigore* make the officer a private man, changes his relations to the Government, divests him of his public authority, releases him from his public duties, and remits him completely to his original status so that he cannot be afterward called a public officer any more than if he had never been commissioned at all. And this effect must be given to the resignation, no matter at what time it took place or what reason induced it. Our simple proposition is that every legal act must be allowed to have its legal effect, that is to say, be followed by its proper consequences; and you cannot defeat its operation by showing that the motive in the mind of the party was reprehensible. The law judges all acts by what it sees and decides upon them according to their true character. If they are

legal in themselves you cannot go behind them to defeat their effect by showing the motive, for mere motives are not within the cognizance of human tribunals. This is so plain and so universally acknowledged that I need not dilate upon it.

Several illustrations have been given of this which our friends and the managers do not seem to like. A sheriff has in his hands a warrant which directs him, if the defendant be found in his bailiwick, to take his body. He finds him on the other side of the county line, where he cannot touch a hair of him without becoming a trespasser. Does it make any difference in that case whether the party fled across the line for the purpose of avoiding the arrest or whether he happened to be there by mere accident?

The jurisdiction of the Federal courts and of the State courts often depends upon the civic relation existing between the parties. It has happened many times that parties who desire to give the Federal courts jurisdiction or to take away the jurisdiction from a State court have changed their residence for that very purpose. So, also, it has happened that a man living in the same State with the other party, and who, therefore, cannot bring a suit in the Federal court, but must submit to the jurisdiction of the State court, assigns or sells his claim to a resident of another State for the sole object of having it tried in the Federal court. It has in all those cases been held that it does not make the slightest difference whether these things were done or not for the purpose and with the intent of changing the jurisdiction.

We admit, and the facts set forth in the pleadings show, that at nine o'clock on the morning of the 2d day of March the chairman of the Committee on War Expenditures gave notice, either directly to General Belknap or mediately to him through his counsel, that if he did not retire from office before twelve o'clock on that day, he would at that hour be impeached. It is also true that to avoid the impeachment which was thus threatened against him, he gave in his resignation and at ten o'clock and thirty minutes the President accepted it. By twelve o'clock, and before the House met, the accused was not only out of office but another person was at the head of the War Department performing the duties of Secretary. This was no compact, we admit, with the chairman of that committee. Mr. CLYMER had no right to speak for the House, but General Belknap knew very well that he was a leading member of the House and that whatever he proposed to do was very likely to be accomplished. It was in the apprehension inspired by this warning that General Belknap acted when he resigned. There is the "head and front of his offending." It can hardly be necessary to say that Mr. CLYMER'S conduct was free from blame. He was at once faithful to the public and just to the accused.

Since the managers do not like the illustration given by my colleague, let me furnish another which perhaps is simpler still.

One man claims that another owes him a debt, and he threatens at nine o'clock in the morning that if the debt be not paid before twelve he will bring a suit against him. The alleged debtor says he does not owe this debt, he has a good defense, but he will do anything rather than go through a trial which will destroy his commercial credit and perhaps bring scandal upon his family. Therefore at eleven o'clock he pays the debt and takes a receipt for it. Shall this creditor nevertheless maintain his action on the ground that the payment was a mere evasion of the threatened suit?

Take another case which is more precisely analogous to this. It is a rule of war in all civilized countries that when a fortified place is taken by storm the persons who compose the garrison may be slaughtered; but if the place is surrendered without effusion of blood then the right to massacre them does not exist. Suppose General Belknap to have been the commander of a fort and the chairman of the Committee on War Expenditures the general of certain mad battalions ready to attack him. General CLYMER, marching upon him with "sonorous metal blowing martial sounds," calls him to a parley and says, "I have found a weak place in that part of your wall where your family is lodged, and unless you surrender before twelve o'clock the general camp, pioneers and all, will be pouring through the breach. I will put to the edge of the sword your wives, your babes, and all unfortunate souls that trace you in their line. No boasting, like a fool; I'll do it." Whereupon General Belknap says, "Rather than have the women butchered and the brains of the children knocked out, I will surrender;" and accordingly, at ten and a half o'clock, he throws open his gates. But the bloody general says, "This is a fraud; he surrendered to avoid the calamity that he was threatened with. The uxorious villain has pulled down his flag to save his wife from the brutality of the soldiers. I will not accept any such resignation. His case stands as if he had resisted to the last and he shall be assaulted anyhow. Let the storming party move up to the work."

That would be the chairman of the War Expenditures; but if my distinguished friend, the chairman of the managers, were at the head of the besieging forces, he would raise a fiction of law. He would refuse to count fractions of a day, and justify the destruction of the garrison on the ground that the surrender took place the night after and the assault the night before. As to their fractional theory, we object to having the constitutional rights of a citizen impaled upon a pin's point like that, even if they could show it to be good.

Courts, where it is necessary for the purposes of public or individual justice, will sometimes assume that to be true which they know to be false or which is just as likely to be false as true; but it is an axiomatic principle that this can only be done when it is necessary to save some valuable right, and never can be so applied as to take away an immunity, a privilege, or an estate which was vested in him before the act took place upon which the fiction is raised. Besides that, the criminal law of the country never in any case allows of any fictions at all.

We must then fall back on the one question whether an officer who has resigned is subject to the power of impeachment, or whether he is to be regarded as a private citizen after he goes out and therefore amenable only to the courts.

The words are, "the President, Vice-President, and all civil officers." Who is the President? If that means an Ex-President, a person who has once held the office of President but whose term has expired or who has resigned, then the same interpretation must be given to the other words, and the words "the Vice-President and all civil officers" may include all persons who have held office at any period of their lives. When we speak about *the* President do we ever refer to anybody except the incumbent of that office? A half-grown boy reads in a newspaper that *the* President occupies the *White House;* if he would understand from that that all Ex-Presidents are in it together he would be considered a very unpromising lad.

The managers would not assign that absurd meaning to any other part of the Constitution. Where it is provided that the Vice-President shall preside in the Senate, they know very well that nobody is included but the actual incumbent. Statutes have been passed declaring that the members of Congress shall have certain privileges, such as franking letters and receiving an annual compensation out of the Treasury. Did anybody ever claim that this extended to old members retired from public life? Any law which declares that public officers as a class shall be entitled to pay as privileges would be confined to those persons in office, and no sensible man would think of a constitution extending it to former officers. When, therefore, the Constitution says that all civil officers may be impeached, it is a violation of common sense to hold that the power may be applied to a late Secretary of War or other person who does not at the time actually hold any office at all.

The Constitution declares that when the President is impeached the Chief Justice shall preside. The question has been propounded repeatedly, and by several Senators, who would preside if an Ex-President was impeached? I admit that that is a puzzle. The puzzle arises out of the absurdity of impeaching an Ex-President. Our friends on the other side are so hampered by their own theory that they are obliged simply to decline answering. There is one answer and only one consistent with their logic, and that is this: That when an Ex-President is impeached an Ex-Chief Justice ought to preside at the trial.

But then the *reductio ad absurdum* is furnished to their argument when they read on that the President, the Vice-President, and all other civil officers of the United States shall be *removed* upon conviction. The single sentence uttered by Governor Johnstone in the North Carolina convention puts this in a light so perfectly clear, that it would be throwing words away to talk about it. How can a man be removed from office who holds no office? How turn him out if he is not in? The object and purpose of impeachment was removal—removal, mind you, not for a day, not for an hour, not a removal which might be rendered nugatory the next moment by his re-appointment or re-election, but a permanent removal. You find an officer misbehaving himself, and you get hold of him while he is still in the possession of power. When you get your grasp upon him you hurl him down, and give him such a pernicious fall that he can never rise again.

Removal is not only the object of impeachment, but it is the sole object. Removal and disqualification are so associated together that they cannot be separated. You cannot pronounce a judgment of removal without disqualifying; and you cannot pronounce a judgment of disqualification without removal, because the judgment which the Constitution requires you to pronounce is a judgment of removal *and* disqualification—not removal *or* disqualification; and this is made perfectly manifest to my mind from the experience we have had in Pennsylvania. It was thought by the convention that framed our constitution desirable that the Senate, upon conviction of an offender of this kind, should have the discretion to say that he might be removed without being disqualified; and accordingly they changed the provision which had previously been copied from the Constitution of the United States, and instead of saying what is said here, that judgment shall extend to removal *and* disqualification, it says it shall extend to removal, *or* to removal and disqualification. The effect of that was to allow of a judgment of removal alone, but not of disqualification alone—removal alone, or removal and disqualification.

Now how, I should like to know, is this Constitution of ours, upon which so much depends, to be construed? Our friends on the other side say that the Government (they mean the powers of the Government) cannot afford to lose any safeguards. I think that it is much more important to preserve the safeguards of public liberty than the safeguards of political power. If they could manage to make you believe that the Constitution of the United States is made of material so flexible that it will stretch to any extent without tearing or bend in any direction without breaking, then with a good deal of pulling and hauling upon it they might manage to make it cover the nakedness of any claim which they might choose to set up. But that is not the rule; on the contrary, the doctrine laid down by all the men who

settled our institutions is precisely the reverse. Wherever a doubt arises about the meaning of a particular provision, that doubt must be resolved in favor of public liberty, and not in favor of the power that is claimed under it. All its authority and jurisdiction are to be confined within the narrowest limits—never to be stretched by construction.

Now, shall you, Senators, who have learned to believe in this doctrine of strict construction, give it up at this time of day? Are you going to surrender it now? No; this is the very time above all others, and this judicial occasion is the proper occasion to show that it is not a mere political dogma, put forth to flatter and cajole the people, but a principle and a truth, founded in conviction and sustained by reason. And do not forget that whatever may seem to be the bad luck which on some occasions has happened to that doctrine, it is inextinguishable; it has a vitality which will arrest the degeneracy which would destroy it.

The men who made the tenth amendment and who faithfully administered the Government upon the principle embodied in it, who at any time would have gone to their graves as freely as to their beds rather than to have seen it violated, are still consecrated in the affections of mankind. No portion of the respect which is due to them has ever been taken away. The colossal grandeur of Washington's character still attracts the admiration of the world; and Franklin's quiet memory climbs to heaven; and the pure philosophy of Jefferson illuminates the path of the statesman; and Madison's wisdom is the standard of orthodoxy, and Jackson's name shall be the watch-word of the free forever.

But suppose you do not think so; suppose you regard this as a great consolidated Government, where all power belongs to the Union, what then? The statutes and ordinances and constitutions and laws which are made by this Government must receive a construction according to the rules of interpretation established for other governments. You will give to this provision at least the kind of interpretation which would be conceded to it if it were an act of the British Parliament, and for that reason the construction contended for by us is just as necessary, according to the common-law principles, as it is if we look for the rule to the Virginia and Kentucky resolutions.

This is a penal provision. When our friends on the other side were ransacking the library to see what they could see in the English cases, it is a pity and a wonder that they did not come across something which would have reminded them that penal statutes are to be construed strictly. This is, according to their own account of it, a penal provision, and all judges in that country from which we derive our notions of law, all judges of every grade, apply that doctrine to such a statute; not merely Coke, and Hale, and Holt, and Mansfield, but others of a lower grade. Jeffreys himself, when he came home red-handed from the bloody assizes, time-serving and blood-thirsty brute as he was, would not have denied that the law had that much humanity.

But there is another ground. Whenever you are considering any special provision of the Constitution which impinges upon some great general right that the Constitution was made for the purpose of protecting, you are always to give it the narrowest construction that you can, so as to take away from the general right as little as possible. This does affect in that way several of the most important rights that were ever claimed by a people or conceded by a government. For instance, all men charged with a criminal offense shall be entitled to a trial by jury. This provision takes away the right of the party accused to a trial by his peers and subjects him to a trial before a political body composed, it may be, of his rivals and his enemies. If the Constitution in plain words says that he shall be deprived of that right, we cannot deny it; but we deny it because it is only by a constrained interpretation that our adversaries would take the right away.

It was the manifest design of those who framed our institutions to provide for a judiciary separate, distinct, apart from the rest of the Government, composed of men having certain qualifications, holding their office by a certain tenure, and paid in a certain way. The Constitution declares that the judicial power of the United States shall be vested in one Supreme Court and such inferior courts as Congress shall from time to time ordain and establish. The impeachment provision takes away from all persons who are subject to it the right of having their cases investigated and determined by judicial officers. It takes a portion of the judicial frown away from the courts where the other parts of the Constitution intended to put the whole.

Again, the principle pervading our Constitution and the constitution of every government pretending to be free is that the judicial, the legislative, and the executive departments shall be kept as completely separate and distinct as it is possible to make them. But this provision, as far as it goes, mingles them together and gives a part of the judicial power to a body whose general functions are legislative.

The Constitution declares what Magna Charta had declared before and what was a well-established principle of the common law, that no man shall be twice vexed for the same cause. Here, however, you try a man first and for the same offense you send him into the courts to be tried again.

There is another provision in our Constitution that every man shall have justice done to him at home, where he can be tried by a jury of his neighbors in the vicinage to which he belongs. The Constitution expressly declares that he shall always be tried in the district where the offense was committed, and it provides also that the district shall not be changed by any law passed after the offense was committed so as to put him within a jurisdiction which he was not subject to at the time the deed was done. But this article disregards that principle entirely, and a custom-house officer in Oregon or Alaska may be brought here three thousand miles and tried before the Senate, where the expense of a trial alone would be a loss as great to him as that of conviction.

All these are reasons which you cannot deny to be sound for saying that this provision be construed as strictly as possible and that nothing should be done under it which cannot be done *strictissimi juris*.

I have finished. I have nothing more to say. I began without an exordium and I will end without a peroration.

Mr. EDMUNDS. Mr. President, I move that the Senate be cleared and the doors closed.

The motion was agreed to; and the Senate (at three o'clock and forty minutes p. m.) proceeded to deliberate upon the question submitted.

The doors being closed,

Mr. EDMUNDS submitted the following order for consideration:

Ordered, That the managers and respondent be excused from attending before the Senate sitting for the trial of impeachment until May, 18th instant.

Mr. BURNSIDE moved to amend the order by inserting at the end thereof, "And that the Senate sitting for the trial of impeachment adjourn to Monday next, the 15th of May instant."

The amendment was agreed to.

Mr. MORRILL, of Maine, moved to amend the order as amended by striking out all after the word "ordered" and in lieu thereof inserting:

That until further notice the attendance before the Senate, sitting for the trial of impeachment, of the managers and the respondent will not be required.

The amendment was agreed to.

The order, as amended, was agreed to, as follows:

Ordered, That until further notice the attendance before the Senate, sitting for the trial of the impeachment, of the managers and the respondent will not be required.

Mr. SHERMAN moved that when the Senate sitting for the trial of impeachment adjourns it be to Monday next at half past twelve o'clock p. m.

Mr. BURNSIDE moved to amend the motion by striking out "Monday next" and in lieu thereof inserting "Tuesday, the 16th instant."

The amendment was rejected.

Mr. SARGENT moved to amend the motion by striking out "Monday" and in lieu thereof inserting "Saturday."

The amendment was rejected.

Mr. PADDOCK moved to amend the motion by striking out "Monday" and in lieu thereof inserting "Friday."

The amendment was rejected.

The question recurring on the motion of Mr. SHERMAN, it was agreed to.

On motion by Mr. SARGENT, (at four o'clock and fifty-five minutes p. m.,) the doors were re-opened.

The PRESIDENT *pro tempore* announced that the Senate sitting for the trial of impeachment, in close session, had ordered that until further notice the attendance before the Senate, sitting for the trial of impeachment, of the managers and the respondent will not be required; and that the Senate so sitting had further ordered that when the Senate sitting for the trial of impeachment adjourn it be to Monday next, at half past twelve o'clock p. m.

On motion by Mr. SARGENT, the Senate sitting for the trial of the impeachment adjourned.

MONDAY, *May* 15, 1876.

The PRESIDENT *pro tempore*. The hour fixed for that purpose having arrived, the legislative and executive business of the Senate will now be suspended, and the Senate will proceed to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

Mr. INGALLS. I move that the galleries be cleared and the doors closed.

The motion was agreed to; there being on a division—ayes 28, noes 9.

The Senate thereupon proceeded to deliberate.

The doors having been closed,

The journal of proceedings of the Senate, sitting for the trial of William W. Belknap, of Monday, May 8, was read.

The PRESIDENT *pro tempore* administered to Mr. ALCORN, who had not been previously sworn, the following oath, namely: "You solemnly swear that in all things appertaining to the trial of the impeachment of William W. Belknap, now pending, you will do impartial justice according to the Constitution and laws: So help you God."

Mr. ALCORN rose and stated that he had been unavoidably absent from the sessions of the Senate sitting for the trial of impeachment heretofore held, and for that reason he asked to be excused from voting upon the question now under consideration presented by the pleadings.

Mr. SHERMAN moved that Mr. ALCORN, for the reasons assigned by him, be excused from voting upon the question now before the Senate as presented by the pleadings.

The motion was agreed to.

The question before the Senate sitting for the trial of impeachment being whether W. W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office,

After debate,

On motion of Mr. EDMUNDS, (at three o'clock and fifteen minutes p. m.,) the Senate sitting for the trial of the impeachment took a recess for twenty minutes;

After which,

Debate was resumed on the foregoing question;

Pending which,

On motion of Mr. MORTON, the Senate sitting for the trial of impeachment adjourned to to-morrow at twelve o'clock and thirty minutes p. m.

TUESDAY, *May* 16, 1876.

The PRESIDENT *pro tempore* having announced the arrival of the hour fixed, the legislative and executive business was suspended, and the Senate proceeded to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

Mr. EDMUNDS. As we adjourned with closed doors yesterday, I suppose the doors will be closed now, as a matter of course.

The PRESIDENT *pro tempore*. The Sergeant-at-Arms will clear the galleries and close the doors.

The usual proclamation was made by the Sergeant-at-Arms.

The Journal of proceedings of the Senate, sitting yesterday for the trial of William W. Belknap, was read.

The question before the Senate sitting for the trial of impeachment being whether W. W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office, as stated in the order of proceedings adopted on the 28th April last,

Mr. MORTON submitted the following question for consideration:

Is there power in Congress to impeach a person for crime committed while in office, if such person had resigned the office and such resignation had been accepted before the finding of articles of impeachment by the House?

Mr. MORRILL, of Vermont, submitted the following question as a substitute for that submitted by Mr. MORTON:

Has the Senate power to entertain jurisdiction in the pending case of the impeachment by the House of Representatives of William W. Belknap, late Secretary of War, notwithstanding the facts alleged in relation to his resignation?

Mr. ALLISON submitted the following resolution for consideration:

Resolved, That the consultations and opinions expressed in secret session be taken down by the reporters and printed in confidence for the use of Senators.

The question submitted by Mr. MORTON having been considered,

Pending debate thereon,

On motion of Mr. SARGENT, (at three o'clock and fifteen minutes p. m.,) the Senate, sitting for the trial of impeachment, took a recess for twenty minutes.

After which,

The Senate sitting for the trial of impeachment resumed the consideration of the question submitted by Mr. MORTON; and,

Pending debate,

On motion of Mr. CRAGIN, (at five o'clock and twenty-five minutes p. m.,) the Senate sitting for the trial of impeachment adjourned to meet to-morrow at twelve o'clock and thirty minutes p. m.

WEDNESDAY, *May* 17, 1876.

The PRESIDENT *pro tempore* having announced the arrival of the hour fixed, the legislative and executive business was suspended, the galleries were cleared, the doors closed, and the Senate proceeded to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

The Journal of the proceedings of the Senate sitting yesterday for the trial of William W. Belknap was read.

Mr. WHYTE submitted the following order for consideration:

Ordered, That the Senate, sitting on trial of impeachment shall proceed, at four o'clock p. m. this day to vote, without further debate, on the question of jurisdiction raised by the pleadings in the pending case; and each Senator shall be permitted to file within two days his written opinion thereon to be printed with the proceedings.

Mr. ALLISON moved to postpone the present and all prior orders and that the Senate sitting for the trial of the impeachment proceed to the consideration of the resolution yesterday submitted by him providing for the reporting and printing, in confidence, of the proceedings had and opinions expressed in secret session.

The motion was not agreed to.

The question before the Senate, sitting as aforesaid, being whether W. W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office, as stated in the order of proceedings adopted on the 28th of April last,

Pending debate thereon,

On motion of Mr. ALLISON, (at two o'clock and five minutes p. m.,) a recess was taken for twenty minutes.

After which,

Pending debate under the order of the 28th April last,

Mr. SARGENT moved (at four o'clock and fifteen minutes p. m.) that the Senate sitting for the trial of the impeachment adjourn to to-morrow at one o'clock p. m.

Mr. DAVIS moved that the Senate sitting for the trial of the impeachment adjourn; and on this motion the yeas and nays being taken resulted—yeas 18, nays 26; as follows:

YEAS—Messrs. Allison, Caperton, Clayton, Cockrell, Cooper, English, Goldthwaite, Gordon, Harvey, Kelly, McCreery, Maxey, Merrimon, Norwood, Oglesby, Randolph, Whyte, and Wright—18.

NAYS—Messrs. Bayard, Bogy, Booth, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Conkling, Conover, Cragin, Ferry, Frelinghuysen, Hamlin, Howe, Ingalls, Jones of Nevada, Kernan, Logan, McMillan, Paddock, Ransom, Sargent, West, and Windom—26.

NOT VOTING—Messrs. Alcorn, Anthony, Davis, Dawes, Dennis, Dorsey, Eaton, Edmunds, Hamilton, Hitchcock, Johnston, Jones of Florida, Key, McDonald, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Patterson, Robertson, Saulsbury, Sharon, Sherman, Spencer, Stevenson, Thurman, Wadleigh, Wallace, and Withers—29.

So the motion was not agreed to.

The question recurring on the motion of Mr. SARGENT, it was agreed to; and the Senate sitting for the trial of the impeachment adjourned to meet to-morrow at one o'clock p. m.

THURSDAY, *May* 18, 1876.

The PRESIDENT *pro tempore* having announced the arrival of the hour fixed, the legislative and executive business was suspended, the galleries were cleared, the doors closed, and the Senate proceeded to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

The journal of the proceedings of the Senate sitting yesterday for the trial of impeachment of William W. Belknap was read.

The question pending being whether W. W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office, as stated in the order of proceedings adopted on the 28th of April last,

Pending debate thereon,

On motion of Mr. EDMUNDS, (at two o'clock and seventeen minutes p. m.,) a recess was taken for twenty minutes,

After which

Mr. WHYTE, by unanimous consent, submitted the following order for consideration:

Ordered, That the Senate sitting for the trial of impeachment shall proceed at four o'clock p. m. on Saturday, May 20, 1876, to vote, without further debate, on the question of jurisdiction raised by the pleadings in the pending case; and each Senator shall be permitted to file within two days his written opinion thereon, to be printed with the proceedings.

Pending debate under the order of 28th April,

On motion by Mr. FRELINGHUYSEN, (at five o'clock and three minutes p. m.,) the Senate sitting for the trial of impeachment adjourned.

FRIDAY, *May* 19, 1876.

The PRESIDENT *pro tempore* having announced the arrival of the hour fixed, the legislative and executive business was suspended, the galleries were cleared, the doors closed, and the Senate proceeded to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

The journal of the proceedings of the Senate sitting yesterday for the trial of impeachment of William W. Belknap was read.

The question before the Senate, sitting as aforesaid, being whether W. W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office, as stated in the order of proceedings adopted on the 28th of April last,

Pending debate thereon,

On motion of Mr. SARGENT, (at two o'clock and seven minutes p. m.,) a recess was taken for twenty minutes.

After which
Debate was resumed under the order of 28th April last, and
Pending debate thereon,
On motion by Mr. HAMLIN, (at four o'clock and forty minutes p. m.,) the Senate sitting for the trial of impeachment adjourned.

SATURDAY, *May* 20, 1876.

The PRESIDENT *pro tempore* having announced the arrival of the hour fixed, the legislative and executive business was suspended, the galleries were cleared, the doors closed, and the Senate proceeded to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

The journal of the proceedings of the Senate sitting yesterday for the trial of impeachment of William W. Belknap was read.

The question before the Senate, sitting as aforesaid, being whether W. W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office, as stated in the order of proceedings adopted on the 28th of April last,

Mr. SHERMAN moved to postpone the pending and all prior orders and proceed to the consideration of the order submitted by Mr. WHYTE on the 18th instant, fixing the time at which the vote on the question of jurisdiction in the pending case of impeachment shall be taken.

After debate,

The motion was not agreed to.

Pending debate under the order of 28th April last,

On motion by Mr. SARGENT, (at three o'clock and forty minutes p. m.,) the Senate sitting for the trial of impeachment adjourned to Monday next at twelve o'clock and thirty minutes p. m.

MONDAY, *May* 22, 1876.

The PRESIDENT *pro tempore* having announced the arrival of the hour fixed, the legislative and executive business was suspended, the galleries were cleared, the doors closed, and the Senate proceeded to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

The Journal of the proceedings of the Senate sitting on Saturday last for the trial of impeachment of William W. Belknap was read.

The PRESIDENT *pro tempore* administered the following oath to Mr. BARNUM, whose credentials were presented this day and who was admitted to his seat as a Senator from the State of Connecticut, to wit:

"You solemnly swear that in all things appertaining to the trial of the impeachment of William W. Belknap now pending you will do impartial justice according to the Constitution and laws: So help you God."

The question before the Senate sitting for the trial of the impeachment being whether W. W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office, as stated in the order of proceedings adopted on the 28th of April last,

Pending debate,

On motion by Mr. EDMUNDS, (at two o'clock and thirty minutes p. m.,) a recess for twenty minutes was taken.

After which,

Debate was resumed under the order of 28th April; and

On motion by Mr. McCREERY, (at four o'clock and thirty-five minutes p. m.,) the Senate sitting for the trial of the impeachment adjourned.

TUESDAY, *May* 23, 1876.

The PRESIDENT *pro tempore* having announced the arrival of the hour fixed, the legislative and executive business was suspended, the galleries were cleared, the doors closed, and the Senate proceeded to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

The Journal of the proceedings of the Senate sitting yesterday for the trial of the impeachment of William W. Belknap was read.

The question before the Senate sitting for the trial of the impeachment being whether W. W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office, as stated in the order of proceedings adopted on the 28th of April last,

Pending debate,

On motion of Mr. ALLISON, (at two o'clock and three minutes p. m.,) a recess for twenty minutes was taken.

After which,

Debate was resumed under the order of 28th April.

Mr. WRIGHT moved that the Senate sitting for the trial of the impeachment adjourn until to-morrow at eleven o'clock.

Pending which,

Mr. INGALLS (at five o'clock and thirty-five minutes p. m.) moved that the Senate sitting as aforesaid do now adjourn.

Mr. EDMUNDS called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 22, nays 20; as follows:

YEAS—Messrs. Allison, Barnum, Bayard, Bogy, Booth, Boutwell, Burnside, Conkling, Cooper, Dennis, Ferry, Goldthwaite, Gordon, Hitchcock, Ingalls, Jones of Nevada, Logan, McCreery, McMillan, Mitchell, Patterson, and Stevenson—22.

NAYS—Messrs. Cockrell, Dawes, Edmunds, Frelinghuysen, Kelly, Kernan, Key, Maxey, Merrimon, Morrill of Vermont, Oglesby, Paddock, Ransom, Sargent, Saulsbury, Thurman, Wallace, West, Windom, and Wright—20.

NOT VOTING—Messrs. Alcorn, Anthony, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Caperton, Christiancy, Clayton, Conover, Cragin, Davis, Dorsey, Eaton, Hamilton, Hamlin, Harvey, Howe, Johnston, Jones of Florida, McDonald, Morrill of Maine, Morton, Norwood, Randolph, Robertson, Sharon, Sherman, Spencer, Wadleigh, Whyte, and Withers—31.

So the motion was agreed to; and the Senate sitting for the trial of the impeachment adjourned.

WEDNESDAY, *May* 24, 1876.

The PRESIDENT *pro tempore* having announced the arrival of the hour fixed, the legislative and executive business was suspended, the galleries were cleared, the doors closed, and the Senate proceeded to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

The journal of the proceedings of the Senate sitting yesterday for the trial of the impeachment was read.

The question being whether W. W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office, as stated in the order of proceedings adopted on the 28th of April last,

Pending debate,

On motion of Mr. CONKLING, (at two o'clock and three minutes p. m.,) a recess for twenty minutes was taken.

After which,

Debate was resumed under the order of 28th April; and

On motion by Mr. FRELINGHUYSEN, (at five o'clock and twelve minutes p. m.,) the Senate sitting for the trial of the impeachment adjourned.

THURSDAY, *May* 25, 1876.

The PRESIDENT *pro tempore* having announced the arrival of the hour fixed, the legislative and executive business was suspended, the galleries were cleared, the doors closed, and the Senate proceeded to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

The Journal of the proceedings of the Senate sitting yesterday for the trial of the impeachment was read.

The question being whether W. W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office, as stated in the order of proceedings adopted on the 28th of April last.

Pending debate,

Mr. SHERMAN submitted the following resolution for consideration:

Resolved, That notwithstanding the resignation of William W. Belknap prior to his impeachment by the House of Representatives, he is still liable to such impeachment for the misdemeanors charged in the articles presented by the House of Representatives, and his plea of such resignation is not sufficient in law to bar the trial upon such articles.

On motion of Mr. ALLISON, (at two o'clock and thirty-three minutes p. m.,) a recess for twenty minutes was taken.

After which,

Debate was resumed under the order of 28th April; and

After debate,

On motion of Mr. EDMUNDS, (at four o'clock and thirty-seven minutes p. m.,) the Senate sitting for the trial of the impeachment adjourned till to-morrow at eleven o'clock a. m.

FRIDAY, *May* 26, 1876.

The PRESIDENT *pro tempore* having announced the arrival of the hour fixed, the legislative and executive business was suspended, the galleries were cleared, the doors closed, and the Senate proceeded to

the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

The Journal of the proceedings of the Senate sitting yesterday for the trial of the impeachment was read.

The question being whether W. W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office, as stated in the order of proceedings adopted on the 28th of April last.

Pending debate,

On motion of Mr. LOGAN, (at two o'clock and thirty minutes p. m.,) a recess of twenty minutes was taken.

After which,

Debate was resumed under the order of 28th April; and

Mr. WHYTE submitted the following order:

Ordered, That the Senate sitting on the trial of impeachment shall, after consideration, proceed on Saturday, the 27th of May, instant, to vote upon the question of jurisdiction raised by the pleadings in the pending case, which vote shall be taken before the Senate shall adjourn on that day; and that each Senator shall be permitted to file within seven days thereafter his written opinion thereon, to be printed with the proceedings in the order in which they may have been delivered.

On motion of Mr. SHERMAN, (at five o'clock and twenty minutes p. m.,) the Senate sitting for the trial of the impeachment adjourned.

SATURDAY, *May* 27, 1876.

The PRESIDENT *pro tempore* having announced the arrival of the hour fixed, the legislative and executive business was suspended, the galleries were cleared, the doors closed, and the Senate proceeded to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

The Journal of the proceedings of the Senate sitting yesterday for the trial of the impeachment was read.

Mr. INGALLS (at twelve o'clock and seven minutes p. m.) moved that the Senate sitting for the trial of the impeachment adjourn.

Mr. EDMUNDS called for the yeas and nays; and being taken, resulted—yeas 0, nays 39; as follows:

YEA—0.

NAYS—Messrs. Allison, Bogy, Boutwell, Cameron of Wisconsin, Christiancy, Clayton, Cockrell, Conkling, Cooper, Cragin, Davis, Dawes, Dennis, Dorsey, Eaton, Edmunds, Ferry, Harvey, Howe, Kelly, Kernan, Key, McCreery, McMillan, Maxey, Morrill of Maine, Morrill of Vermont, Morton, Oglesby, Paddock, Randolph, Sargent, Saulsbury, Sherman, Thurman, Whyte, Windom, Withers, and Wright—39.

NOT VOTING—Messrs. Alcorn, Anthony, Barnum, Bayard, Booth, Bruce, Burnside, Cameron of Pennsylvania, Caperton, Conover, Frelinghuysen, Goldthwaite, Gordon, Hamilton, Hamlin, Hitchcock, Ingalls, Johnston, Jones of Florida, Jones of Nevada, Logan, McDonald, Merrimon, Mitchell, Norwood, Patterson, Ransom, Robertson, Sharon, Spencer, Stevenson, Wadleigh, Wallace, and Wright—34.

So the motion was not agreed to.

The question being whether W. W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office, as stated in the order of proceedings adopted on the 28th of April last,

Pending debate,

On motion of Mr. THURMAN, (at one o'clock and fifty minutes p. m.,) a recess of twenty minutes was taken.

After which,

Mr. THURMAN submitted the following resolution for consideration:

Resolved, That the House of Representatives and the respondent be notified that on the — day of ——, at twelve o'clock meridian, the Senate will deliver its judgment in open Senate on the question of jurisdiction raised by the pleadings, at which time the managers on the part of the House and the respondent are notified to attend.

Resolved, That at the time specified in the foregoing resolution the President of the Senate shall pronounce the judgment of the Senate as follows: "It is ordered by the Senate sitting for the trial of the articles of impeachment preferred by the House of Representatives against William W. Belknap, late Secretary of War, that the demurrer of said William W. Belknap to the replication of the House of Representatives to the plea to the jurisdiction filed by said Belknap be, and the same hereby is, overruled; and, going back to the first defect, and it being the opinion of the Senate that said plea is insufficient in law, and that said articles of impeachment are sufficient in law, it is therefore further ordered and adjudged that said plea be, and the same hereby is, overruled and held for naught, and said William W. Belknap is ordered to plead or answer to the merits within —— days;" which judgment thus pronounced shall be entered upon the journal of the Senate sitting as aforesaid.

Pending debate under the order of the Senate of the 28th of April last,

Mr. MORTON submitted the following order for consideration:

Ordered, That the Senate proceed on Friday next at one o'clock to vote without further debate upon the pending and cognate questions.

Mr. MORTON moved to postpone the pending and all prior orders, and that the Senate proceed to the consideration of the foregoing order.

The motion was agreed to.

Mr. EDMUNDS moved to amend the order of Mr. MORTON so as to read:

Ordered, That the Senate proceed on Monday next, after consideration, to vote upon the pending and cognate questions.

After debate,

Mr. HOWE called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 28, nays 21; as follows:

YEAS—Messrs. Bayard, Bogy, Booth, Caperton, Cockrell, Cooper, Davis, Dawes, Dennis, Edmunds, Gordon, Hamilton, Kernan, Key, McCreery, Maxey, Morrill of Vermont, Norwood, Oglesby, Randolph, Sargent, Saulsbury, Sherman, Thurman, Wallace, Windom, Withers, and Wright—28.

NAYS—Messrs. Allison, Boutwell, Burnside, Christiancy, Cragin, Ferry, Frelinghuysen, Goldthwaite, Harvey, Howe, Ingalls, Jones of Florida, Jones of Nevada, Kelly, Logan, McMillan, Mitchell, Morton, Patterson, Ransom, and Stevenson—21.

NOT VOTING—Messrs. Alcorn, Anthony, Barnum, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Clayton, Conkling, Conover, Dorsey, Eaton, Hamlin, Hitchcock, Johnston, McDonald, Merrimon, Morrill of Maine, Paddock, Robertson, Sharon, Spencer, Wadleigh, West, and Whyte—24.

So the amendment was agreed to.

On the question of agreeing to the order of Mr. MORTON, as amended on the motion of Mr. EDMUNDS,

Mr. PADDOCK moved to amend the order by striking out all after the word "ordered," and in lieu thereof inserting:

That the Senate sitting as a court of impeachment take a recess until 7.30 o'clock, that the vote upon the question of jurisdiction be taken at eleven o'clock this evening, and that Senators who may desire to file opinions in the case shall be permitted to do so before the 10th of June next.

Mr. PADDOCK called for the yeas and nays, and they were ordered; and being taken resulted—yeas 17, nays 34; as follows:

YEAS—Messrs. Allison, Bruce, Burnside, Edmunds, Frelinghuysen, Hamilton, Harvey, Ingalls, Jones of Nevada, McMillan, Maxey, Mitchell, Morton, Oglesby, Paddock, Windom, and Wright—17.

NAYS—Messrs. Bayard, Bogy, Booth, Boutwell, Caperton, Christiancy, Cockrell, Conkling, Cooper, Cragin, Davis, Dawes, Dennis, Ferry, Goldthwaite, Gordon, Jones of Florida, Kelly, Kernan, Key, Logan, McCreery, Morrill of Vermont, Norwood, Patterson, Randolph, Ransom, Sargent, Saulsbury, Sherman, Stevenson, Thurman, Wallace, and Withers—34.

NOT VOTING—Messrs. Alcorn, Anthony, Barnum, Cameron of Pennsylvania, Cameron of Wisconsin, Clayton, Conover, Dorsey, Eaton, Hamlin, Hitchcock, Howe, Johnston, McDonald, Merrimon, Morrill of Maine, Robertson, Sharon, Spencer, Wadleigh, West, and Whyte—22.

So the amendment was rejected.

The question recurring on the order of Mr. MORTON as amended,

Mr. OGLESBY having proposed an amendment thereto which was disagreed to; and

The order of Mr. MORTON having been further amended on the motion of Mr. CONKLING,

Mr. MORTON moved to lay the order, as amended, on the table.

Mr. MORTON called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 14, nays 34; as follows:

YEAS—Messrs. Allison, Boutwell, Christiancy, Conkling, Cragin, Ferry, Frelinghuysen, Harvey, Howe, Ingalls, Logan, McMillan, Morton, and Patterson—14.

NAYS—Messrs. Bayard, Bogy, Booth, Burnside, Caperton, Cockrell, Cooper, Davis, Dawes, Dennis, Edmunds, Goldthwaite, Gordon, Kelly, Kernan, Key, McCreery, Maxey, Mitchell, Morrill of Vermont, Norwood, Oglesby, Paddock, Randolph, Ransom, Sargent, Saulsbury, Sherman, Stevenson, Thurman, Wallace, Windom, Withers and Wright—34.

NOT VOTING—Messrs. Alcorn, Anthony, Barnum, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Clayton, Conover, Dorsey, Eaton, Hamilton, Hamlin, Hitchcock, Johnston, Jones of Florida, Jones of Nevada, McDonald, Merrimon, Morrill of Maine, Robertson, Sharon, Spencer, Wadleigh, West, and Whyte—25.

So the motion was not agreed to.

The order of Mr. MORTON having been further amended, on motion by Mr. EDMUNDS, it was agreed to, as follows:

Ordered, That the Senate proceed on Monday next, after consideration, to vote upon the pending question and any amendment that may be proposed thereto.

Mr. MORRILL, of Vermont, moved that when the Senate sitting for the trial of the impeachment adjourns it adjourn to Monday next at ten o'clock a. m.

The motion was agreed to.

On motion of Mr. OGLESBY, (at six o'clock and thirty-five minutes p. m.,) the Senate sitting for the trial of the impeachment adjourned.

MONDAY, *May* 29, 1876.

The PRESIDENT *pro tempore* having announced the arrival of the hour fixed, the legislative and executive business was suspended, the galleries were cleared, the doors closed, and the Senate proceeded to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

The journal of the proceedings of the Senate sitting on Saturday for the trial of the impeachment was read.

The question being whether W. W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office, as stated in the order of proceedings adopted on the 28th of April last,

Pending debate,

On motion of Mr. EDMUNDS, (at one o'clock and thirty minutes p. m.,) a recess of twenty minutes was taken.

After which,

Debate was resumed under the order of 28th April last; and

Debate having been concluded thereunder,

The PRESIDENT *pro tempore* announced that the proposition before the Senate now pending for determination was the inquiry submitted by Mr. MORTON on the 16th instant.

Mr. MORTON having modified his inquiry to read as follows—

Resolved, That the power of impeachment created by the Constitution does not extend to a person who is charged with the commission of a high crime while he was a civil officer of the United States and acting in his official character, but who had ceased to be such officer before the finding of articles of impeachment by the House of Representatives—

Mr. MORRILL, of Vermont, moved to amend the resolution by striking out all after the word "resolved," in the first line, and in lieu thereof inserting:

That the demurrer of the respondent to the replication of the House of Representatives to the plea of the respondent be, and the same is hereby, overruled; and that the plea of the respondent to the jurisdiction of the Senate be, and the same is hereby, overruled; and that the articles of impeachment are sufficient to show that the Senate has jurisdiction of the case, and that the respondent answer to the merits of the accusation contained in the articles of impeachment.

Mr. CHRISTIANCY moved to amend the amendment of Mr. MORRILL, of Vermont, by striking out all after the words "that," in the first line thereof, and inserting:

W. W. Belknap, the respondent, is not amenable to trial by impeachment for acts done as Secretary of War, he having resigned said office before impeachment.

After debate,

Mr. WRIGHT moved to lay the resolution of Mr. MORTON on the table.

Mr. CONKLING called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 36, nays 30; as follows:

YEAS—Messrs. Bayard, Bogy, Burnside, Caperton, Cockrell, Cooper, Davis, Dawes, Dennis, Edmunds, Goldthwaite, Gordon, Hamilton, Hitchcock, Kelly, Kernan, Key, McCreery, McDonald, Maxey, Mitchell, Morrill of Vermont, Norwood, Randolph, Ransom, Robertson, Sargent, Saulsbury, Sherman, Stevenson, Thurman, Wadleigh, Wallace, Whyte, Withers, and Wright—36.

NAYS—Messrs. Allison, Booth, Boutwell, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Clayton, Conkling, Cragin, Dorsey, Eaton, Ferry, Frelinghuysen, Hamlin, Harvey, Howe, Ingalls, Jones of Florida, Jones of Nevada, Logan, McMillan, Morrill of Maine, Morton, Oglesby, Paddock, Patterson, Spencer, West, and Windom—30.

NOT VOTING—Messrs. Alcorn, Anthony, Barnum, Conover, Johnston, Merrimon, and Sharon—7.

So the resolution was ordered to lie on the table.

Mr. THURMAN submitted the following resolutions for consideration:

1. *Resolved*, That in the opinion of the Senate William W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office.

2. *Resolved*, That the House of Representatives and the respondent be notified that on the — day of ——, at twelve o'clock meridian, the Senate will deliver its judgment in open Senate on the question of jurisdiction raised by the pleadings, at which time the managers on the part of the House and the respondent are notified to attend.

3. *Resolved*, That at the time specified in the foregoing resolution the President of the Senate shall pronounce the judgment of the Senate as follows: "It is ordered by the Senate sitting for the trial of the articles of impeachment preferred by the House of Representatives against William W. Belknap, late Secretary of War, that the demurrer of said William W. Belknap to the replication of the House of Representatives to the plea to the jurisdiction filed by said Belknap be, and the same hereby is, overruled; and going back to the first defect, and it being the opinion of the Senate that said plea is insufficient in law, and that said articles of impeachment are sufficient in law, it is therefore further ordered and adiudged that said plea be, and the same hereby is, overruled and held for naught, and said William W. Belknap is ordered to plead or answer to the merits within —— days;" which judgment thus pronounced shall be entered upon the journal of the Senate sitting as aforesaid.

Mr. CONKLING moved to amend the first resolution by inserting at the end thereof "before he was impeached."

The amendment was agreed to.

Mr. CONKLING having demanded a division of the question embraced in the resolutions of Mr. THURMAN and a separate vote thereon,

On the question to agree to the first resolution as amended,

Mr. PADDOCK further moved to amend the said resolution by striking out all after the word "resolved" and in lieu thereof inserting:

That William W. Belknap, late Secretary of War, having ceased to be a civil officer of the United States by reason of his resignation before proceedings in impeachment were commenced against him by the House of Representatives, the Senate cannot take jurisdiction in this case.

Mr. EDMUNDS called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 29, nays 37; as follows:

YEAS—Messrs. Allison, Booth, Boutwell, Bruce, Cameron of Wisconsin, Christiancy, Clayton, Conkling, Cragin, Dorsey, Eaton, Ferry, Frelinghuysen, Hamlin, Harvey, Howe, Ingalls, Jones of Florida, Jones of Nevada, Logan, McMillan, Morrill of Maine, Morton, Oglesby, Paddock, Patterson, Spencer, West, and Windom—29.

NAYS—Messrs. Bayard, Bogy, Burnside, Cameron of Pennsylvania, Caperton, Cockrell, Cooper, Davis, Dawes, Dennis, Edmunds, Goldthwaite, Gordon, Hamilton, Hitchcock, Kelly, Kernan, Key, McCreery, McDonald, Maxey, Mitchell, Morrill of Vermont, Norwood, Randolph, Ransom, Robertson, Sargent, Saulsbury, Sherman, Stevenson, Thurman, Wadleigh, Wallace, Whyte, Withers, and Wright—37.

NOT VOTING—Messrs. Alcorn, Anthony, Barnum, Conover, Johnston, Merrimon, and Sharon—7.

So the amendment was rejected.

The question recurring on the first resolution of Mr. THURMAN as amended,

On the question to agree thereto as follows—

Resolved, That in the opinion of the Senate William W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office before he was impeached—

Mr. THURMAN called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 37, nays 29, as follows:

YEAS—Messrs. Bayard, Bogy, Burnside, Cameron of Pennsylvania, Caperton, Cockrell, Cooper, Davis, Dawes, Dennis, Edmunds, Goldthwaite, Gordon, Hamilton, Hitchcock, Kelly, Kernan, Key, McCreery, McDonald, Maxey, Mitchell, Morrill of Vermont, Norwood, Randolph, Ransom, Robertson, Sargent, Saulsbury, Sherman, Stevenson, Thurman, Wadleigh, Wallace, Whyte, Withers, and Wright—37.

NAYS—Messrs. Allison, Booth, Boutwell, Bruce, Cameron of Wisconsin, Christiancy, Clayton, Conkling, Cragin, Dorsey, Eaton, Ferry, Frelinghuysen, Hamlin, Harvey, Howe, Ingalls, Jones of Florida, Jones of Nevada, Logan, McMillan, Morrill of Maine, Morton, Oglesby, Paddock, Patterson, Spencer, West, and Windom—29.

NOT VOTING—Messrs. Alcorn, Anthony, Barnum, Conover, Johnston, Merrimon, and Sharon—7.

So the first resolution, as amended, was agreed to.

The question recurring on the second resolution of Mr. THURMAN,

The said resolution having been amended on the motion of Mr. BAYARD,

On the question to agree thereto as amended,

Pending debate,

Mr. HITCHCOCK (at seven o'clock and thirteen minutes p. m.) moved that the Senate sitting for the trial of impeachment adjourn to Wednesday next at twelve o'clock and thirty minutes p. m.

Mr. HITCHCOCK called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 27, nays 36; as follows:

YEAS—Messrs. Allison, Boutwell, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Clayton, Conkling, Cragin, Dawes, Dorsey, Eaton, Ferry, Frelinghuysen, Hamlin, Harvey, Hitchcock, Howe, Ingalls, Jones of Florida, Jones of Nevada, Logan, McMillan, Morton, Patterson, Spencer, and West—27.

NAYS—Messrs. Bayard, Bogy, Booth, Burnside, Caperton, Cockrell, Cooper, Davis, Dennis, Edmunds, Goldthwaite, Gordon, Kelly, Kernan, Key, McCreery, McDonald, Maxey, Mitchell, Morrill of Vermont, Norwood, Oglesby, Paddock, Randolph, Ransom, Robertson, Sargent, Saulsbury, Sherman, Stevenson, Thurman, Wallace, Whyte, Windom, Withers, and Wright—36.

NOT VOTING—Messrs. Alcorn, Anthony, Barnum, Conover, Hamilton, Johnston, Merrimon, Morrill of Maine, Sharon, and Wadleigh—10.

So the motion to adjourn was not agreed to.

The question recurring on the second resolution of Mr. THURMAN, as amended,

Mr. CHRISTIANCY moved to amend the said resolution by striking out all after the word "resolved" and in lieu thereof inserting:

Whereas the Constitution of the United States provides that no person shall be convicted on impeachment without the concurrence of two thirds of the members present; and whereas more than one-third of all the members of the Senate have already pronounced their conviction that they have no right or power to adjudge or try a citizen holding no public office or trust when impeached by the House of Representatives; and whereas the respondent, W. W. Belknap, was not when impeached an officer, but a private citizen of the United States, and of the State of Iowa; and whereas said Belknap has, since proceedings of impeachment were commenced against him, been indicted and now awaits trial before a judicial court for the same offenses charged in the articles of impeachment, which indictment is pursuant to a statute requiring in case of conviction (in addition to fine and imprisonment) an infliction of the utmost judgment which can follow impeachment in any case, namely, disqualification ever again to hold office:

Resolved, That in view of the foregoing facts it is inexpedient to proceed further in the case.

After debate,

Mr. CHRISTIANCY, by unanimous consent of the Senate, withdrew his amendment.

The question recurring on the second resolution of Mr. THURMAN, as amended, as follows—

Resolved, That the House of Representatives and the respondent be notified that on Thursday, the 1st day of June, 1876, at one o'clock p. m., the Senate will deliver its judgment, in open Senate, on the question of jurisdiction raised by the pleadings, at which time the managers on the part of the House and the respondent are notified to attend—

On the question to agree thereto,

Mr. THURMAN called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 45, nays 4; as follows:

YEAS—Messrs. Bayard, Bogy, Booth, Boutwell, Burnside, Caperton, Christiancy, Clayton, Cockrell, Cooper, Davis, Dawes, Dennis, Edmunds, Ferry, Goldthwaite, Gordon, Hamilton, Harvey, Hitchcock, Kelly, Kernan, Key, McCreery, McDonald, Maxey, Morrill of Vermont, Norwood, Oglesby, Paddock, Randolph, Ransom, Robertson, Sargent, Saulsbury, Sherman, Stevenson, Thurman, Wadleigh, Wallace, West, Whyte, Windom, Withers, and Wright—45.

NAYS—Messrs. Eaton, Hamlin, McMillan, and Morrill of Maine—4.

NOT VOTING—Messrs. Alcorn, Allison, Anthony, Barnum, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Conkling, Conover, Cragin, Dorsey, Frelinghuysen, Howe, Ingalls, Johnston, Jones of Florida, Jones of Nevada, Logan, Merrimon, Mitchell, Morton, Patterson, Sharon, and Spencer—24.

So the second resolution, as amended, was agreed to.

The question recurring on the third resolution,

The said resolution having been amended on the motion of Mr. BAYARD and on the motion of Mr. THURMAN to read as follows:

Resolved, That at the time specified in the foregoing resolution the President of the Senate shall pronounce the judgment of the Senate as follows: "It is ordered by the Senate sitting for the trial of the articles of impeachment preferred by the House of Representatives against William W. Belknap, late Secretary of War, that the demurrer of said William W. Belknap to the replication of the House of Representatives to the plea to the jurisdiction filed by said Belknap be, and the same hereby is, overruled; and, it being the opinion of the Senate that said plea is insufficient in law and that said articles of impeachment are sufficient in law, it is therefore further ordered and adjudged that said plea be, and the same hereby is, overruled and held for naught;" which judgment thus pronounced shall be entered upon the journal of the Senate sitting as aforesaid.

On the question to agree thereto Mr. THURMAN called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 35, nays 22; as follows:

YEAS—Messrs. Bayard, Bogy, Burnside, Cameron of Pennsylvania, Caperton, Cockrell, Cooper, Davis, Dawes, Dennis, Edmunds, Goldthwaite, Gordon, Hamil-

ton, Kelly, Kernan, Key, McCreery, McDonald, Maxey, Morrill of Vermont, Norwood, Randolph, Ransom, Robertson, Sargent, Saulsbury, Sherman, Stevenson, Thurman, Wadleigh, Wallace, Whyte, Withers, and Wright—35.

NAYS—Messrs. Allison, Booth, Boutwell, Cameron of Wisconsin, Christiancy, Conkling, Cragin, Eaton, Ferry, Frelinghuysen, Hamlin, Harvey, Howe, Jones of Nevada, Logan, McMillan, Morrill of Maine, Oglesby, Paddock, Spencer, West, and Windom—22.

NOT VOTING—Messrs. Alcorn, Anthony, Barnum, Bruce, Clayton, Conover, Dorsey, Hitchcock, Ingalls, Johnston, Jones of Florida, Merrimon, Mitchell, Morton, Patterson, and Sharon—16.

So the resolution, as amended, was agreed to.

On motion by Mr. EDMUNDS, it was

Ordered, That when the Senate sitting for the trial of impeachment adjourns it be to Thursday next at one o'clock p. m.

Mr. WHYTE submitted an order, which was considered by unanimous consent; and the same having been amended on the motion of Mr. EDMUNDS, it was agree to, as follows:

Ordered, That each Senator be permitted to file his opinion in writing upon the question of jurisdiction in this case on or before the 1st day of July, 1876, to be printed with the proceedings in the order in which the same shall be delivered, and the opinions pronounced in the Senate shall be printed in the order in which they were so pronounced.

On motion by Mr. CONKLING, (at nine o'clock and twenty-five minutes p. m.,) the Senate sitting for the trial of the impeachment adjourned.

OPINIONS

DELIVERED IN THE

DELIBERATION OF THE SENATE ON THE QUESTION RAISED BY THE DEMURRER OF

WM. W. BELKNAP, THE RESPONDENT,

TO

THE REPLICATION OF THE HOUSE OF REPRESENTATIVES TO THE PLEA TO THE JURISDICTION FILED BY THE RESPONDENT, VIZ: WHETHER SAID RESPONDENT IS LIABLE TO BE IMPEACHED BY THE HOUSE OF REPRESENTATIVES, AND TRIED BY THE SENATE ON IMPEACHMENT FOR ACTS DONE BY HIM AS SECRETARY OF WAR, NOTWITHSTANDING HIS RESIGNATION OF THAT OFFICE BEFORE HIS IMPEACHMENT.

Opinion of Mr. McDonald,

Delivered May 15, 1876.

Mr. McDONALD. Mr. President, the question for present consideration before the Senate sitting as a court of impeachment is whether the respondent, William W. Belknap, is amenable to trial in this court for acts done as Secretary of War, notwithstanding his resignation of said office, and, in that connection, whether the motives which may have influenced him to resign are material as affecting the question of our jurisdiction.

The brevity of the constitutional provisions relating to impeachment and the absence of any precedent in our history add greatly to the difficulties which would ordinarily surround a question of so much importance.

In the first article of the Constitution—the one providing for the organization, prescribing the jurisdiction, and defining the powers of Congress—the sole power of impeachment is conferred upon the House of Representatives, and the Senate is invested with the sole power to try all impeachments. The limitations upon the powers thus conferred, as contained in the same article, are "that judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold or enjoy any office of honor, trust, or profit under the United States." It will be seen that these are limitations upon the power to punish, and not upon the jurisdiction of the court to hear and determine matters that may be the subject of impeachment. It is also contended that a still further limitation is contained in section 4 of article 2 of the Constitution affecting the jurisdiction of this court, wherein it is provided that the "President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high-crimes and misdemeanors." Inasmuch as this section is found in that article of the Constitution which creates the executive and administrative department of the Government, and is designed to provide a mode for the removal of such officers from office, if it limits in any degree the general powers of the co-ordinate branch of Government in which is vested the sole power of impeachment, such limitations could only be by implication, and could not be held to cripple those powers so as to defeat a jurisdiction that had once attached.

At the time these meager provisions were ingrafted into the Constitution it cannot be claimed that the framers of that instrument supposed they were conferring an undefined and undefinable power. On the contrary, they must have taken it for granted that the jurisdiction they were conferring upon the House of Representatives and the Senate in matters of impeachment was as clearly ascertainable as the jurisdiction conferred upon the Federal courts by the same instrument which, by article 3 of the Constitution, embraced all cases in law and equity arising under the Constitution and laws of the United States.

At the time the Constitution was framed the jurisdiction of the British Parliament in matters of impeachment was as much a part of the constitutional law of England as was her system of civil and criminal jurisprudence. It rested upon the same immemorial usage as the common law, and might properly be termed a part of it. It performed a similar office in respect to political offenders in the judicial system of Great Britain that courts of equity did in matters of conscience. Courts of equity grew out of the necessity created by the unbending rules and practice of the courts of common law. Equity is defined by one of the eminent jurists of Great Britain to be "the correction of that wherein the law by reason of its universality was defective." A class of offenders whose close relation to the affairs of state as ministers of the Crown or whose personal power and influence made it difficult if not impossible to deal with them in ordinary courts of the common law, made it necessary to clothe some more powerful tribunal with authority to try them, and in such cases the House of Commons in the name of the whole people arraigned them at the bar of the House of Lords as the highest court of judicature in the realm, and this was called impeachment. The usual grounds of accusation were alleged misdemeanors committed by persons employed by the Crown, either at home or in its foreign service, maladministration of justice and extrajudicial conduct by judges of the realm, treason and treasonable practices not specifically named in the statute. These, as will be seen by consulting Hartsell's Precedents of Proceedings in Parliament, were usually classed under the heads of treason, bribery, and high crimes and misdemeanors.

In early times the power to impeach did not seem to be limited to official crimes, or crimes committed by persons holding official stations, but was invoked against such offenders as the House of Commons deemed proper subjects, and for causes the House of Lords were willing to entertain. But in such examination as I have been able to make I have seen no case that received the sanction of both Houses in impeachments against commoners which did not grow out of malconduct in office, or was not for some political offense, such as treason or the like. As for the peers of the realm they could only be proceeded against for treason, or misprision of treason, felony, or misprision of felony, by impeachment. It was sometimes doubted whether a commoner could be impeached for any capital offense, but the weight of authority is against this restriction. It is quite clear, however, that as early as the impeachment and trial of Warren Hastings, commoners were only impeachable for official crimes or political offenses of such magnitude as to take them out of the case of ordinary offenders. Thus stood the law of impeachment at the time the Federal Constitution was framed; and it must therefore be held that this was the power conferred upon the Senate and House of Representatives, to be exercised by each respectively in a manner provided in the sections of the Constitution which I have substantially quoted, limited and controlled by the provisions of that instrument relating to that subject and by the nature and character of our institutions.

The nature of our institutions necessarily eliminated or rendered inoperative all that part of the law of impeachment which related to peers of England as peers of the realm, and left in force only such parts of the law as gave authority to impeach commoners.

The provisions of our Constitution which limited judgment in cases of impeachment to removal from office and disqualification to hold or enjoy any office of honor, trust, or profit under the United States, while it subjected the party to indictment, trial, judgment, and punishment in the courts according to law, withheld from this court the power exercised by the House of Lords of covering by their judgment the whole punishment attached by law to the offense, and separated the offense into two distinct parts, vesting in the Senate as a court of impeachment the power to impose the political punishment authorized by the Constitution, leaving the party to be tried for the criminal violation of law by a jury. By the judgment in impeachment the offender is simply divested of his political capacity; it touches neither his person nor his property.

Impeachment, therefore, under our Constitution is that procedure by which persons who holding civil offices under the United States, including the President and Vice-President, may be brought to trial for the commission of treason, bribery, or other high crimes and misdemeaners committed in office, and be adjudged to suffer such political penalties as are provided in the Constitution. And the question for determination at this time is whether one who while in office has become liable to these penalties can be proceeded against after he has voluntarily terminated his official existence, and when it is no longer in the power of this court to impose the full measure of the political punishment which may be incident to the judgment against

him. In other words, is the power to order the removal of the offender from office essential to the jurisdiction of this court, and does the want of such power take away from it the authority to hear and determine the accusation and to impose such political punishment as may remain, namely, to divest him of his political capacity? If this is true, then it must follow, if a party accused should cease to be a civil officer at any time before final judgment is rendered against him and that fact should be made known to this court by proper suggestion, that the proceeding would abate, and therefore the accused might go through the entire trial in the hope of defeating the cause upon its merits, and, failing in that, could at any time he saw proper to do so withdraw himself from the jurisdiction of this court by a voluntary surrender of his office. In the case under consideration, that voluntary surrender of official station took place on the same day and within a few hours before the House of Representatives took cognizance of this case; but if the Senate has no power to try after the judgment of removal could no longer be operative on account of the voluntary act of the accused in vacating the office, it could make no difference when that vacation occurred, provided it antedated the finding and judgment of the court on the merits.

But, as I have already stated, the limitations in the Constitution relied on are not limitations upon the jurisdiction of the court to hear and determine matters of impeachment, but are limitations only upon the judgment of the court. These can extend no further than the limitations prescribe; and, while it might be true that the court might be disinclined to go on with the cause when it was informed that no part of a judgment it had power to render could be operative for any cause, yet I apprehend that so long as there was a party against whom the suit might be prosecuted such party could not arrest the power of the court to hear and determine the cause by the interposition of any such plea. Nor could it be claimed that, because the whole judgment which it might be in the power of the court to enter against the party could not in all its parts be effectual, therefore the part which could operate must also fail because it is only a part of what might have been imposed but for the act of the accused.

Such a construction as this, with such results as it would lead to, ought not to be adopted unless, from the provisions of the Constitution, no other could be given to them and at the same time carry into effect the intent of its framers. But there is another consideration that is strongly opposed to the construction that is claimed by the counsel for the accused, and that is the fact that judgments in impeachment are excepted out of the pardoning power conferred by the Constitution upon the President. In England it was a mooted question whether a pardon under the great seal was pleadable to an impeachment by the Commons in Parliament. It was conceded that the king might pardon after conviction, but it was claimed that he could not arrest the proceedings pending the trial by Parliament. This question, so far as England was concerned, was put at rest by express provisions in the act of settlement adopted and passed in the reign of William of Orange, and was one of the results of the great revolution, by which it was expressly provided that no such pardon was pleadable. The framers of our Constitution undoubtedly had this feature of the British constitution in view when they withheld from the Chief Executive all power over the proceedings and judgments of this court in matters of impeachment, and thus rendered it certain that official offenders liable to the penalties provided for official crime, so far as those penalties were political, could not escape the consequences of their official misconduct, the chief of which is to divest the offender of his political capacity for all time. But if this political incapacity can be avoided by simple resignation, then the safeguards provided against such a result are wholly inefficient.

Entertaining these views, I must of necessity hold that the plea of the accused to the jurisdiction of this court is not sufficient in law, and that the trial may proceed against him on its merits, notwithstanding the facts set up in his plea. It also follows from the views that I have already expressed that the motives which may have induced him to resign his office are wholly immaterial.

Opinion of Mr. Thurman,

Delivered May 15, 1876.

Mr. THURMAN. Mr. President, the Constitution provides (article 1, section 2, paragraph 5) that the House of Representatives "shall have the sole power of impeachment;" and (same article, section 3, paragraph 6) that "the Senate shall have the sole power to try all impeachments." The terms "impeachment," "bill of attainder," "*ex post facto* law," "reprieves," "pardons," "cases in law and equity," "cases of admiralty and maritime jurisdiction," "crimes," "piracy," "felony," and "jury" are all found in the Constitution; but there is no definition of either of them in that instrument. Nor was any definition necessary, for each of these terms had, when the Constitution was framed and adopted, a definite legal signification; and this known signification must be given to it unless the context requires it to be limited or modified. We are thus brought to the inquiries:

First. What was the legal signification of the technical term "impeachment" when the Constitution was adopted?

Second. Is that legal signification limited or modified by anything found in the Constitution?

To answer the first question we must have recourse to the sources of the common and parliamentary law, in English jurisprudence and history. For no impeachment trials in America, nor any constitutional provisions of the States, or charters of the colonies had established, before the adoption of the Constitution, a meaning of the term "impeachment" peculiar to America, or in any wise different from the signification given to the term in the jurisprudence of the mother country. Indeed no case of a trial upon impeachment, in America, prior to the adoption of our Constitution, has been pointed out.

Turning then to English jurisprudence we find that an impeachment is an accusation against an individual preferred by the House of Commons and tried by the House of Lords; that it was in existence as early as the year 1376, and has been frequently resorted to, especially in the seventeenth and eighteenth centuries, for the punishment of great offenders; that "all the king's subjects are impeachable," whether in or out of office, but that the procedure has with very few, if any, exceptions been confined to cases of official malfeasance or misfeasance, or of abuse of franchises or privileges granted by the Crown.

In Wooddeson's fortieth lecture, entitled "Of Parliamentary Impeachments," delivered a few years before the formation of our Constitution, and with which, it is probable, the most of the framers of the Constitution were familiar, it is said:

> It is certain that magistrates and officers intrusted with the administration of public affairs may abuse their delegated powers to the extensive detriment of the community, and at the same time in a manner not properly cognizable before the ordinary tribunals. The influence of such delinquents, and the nature of such offenses may not unsuitably engage the authority of the highest court and the wisdom of the sagest assembly. The Commons, therefore, as the grand inquest of the nation, become suitors for penal justice, and they cannot consistently either with their own dignity, or with safety to the accused, sue elsewhere but to those who share with them in the legislature. *On this policy is founded the origin of impeachments.*

And again:

> All the king's subjects are impeachable in Parliament. * * * *Such kinds of misdeed however as peculiarly injure the commonwealth by the abuse of high offices of trust are the most proper, and have been the most usual grounds for this kind of prosecution.* Thus, if a lord chancellor be guilty of bribery or of acting grossly contrary to the duty of his office, if the judges mislead their sovereign by unconstitutional opinions, if any other magistrate attempt to subvert the fundamental laws, or introduce arbitrary power, these have been deemed cases adapted to parliamentary inquiry and decision. So when a lord chancellor has been thought to have put the seal to an ignominious treaty, a lord admiral to neglect the safeguard of the sea, an embassador to betray his trust, a privy counsellor to propound or support pernicious and dishonorable measures, or a confidential adviser of his sovereign to obtain exorbitant grants or incompatible employments, these imputations have properly occasioned impeachments; because it is apparent how little the ordinary tribunals are calculated to take cognizance of such offenses, or to investigate and reform the general policy of the state.

Such was the state of the English law when our Constitution was adopted. Impeachment was resorted to, not for the punishment of ordinary crimes cognizable by the ordinary criminal courts, but to punish official misconduct or abuses of public trust. It is true that some acts of official misconduct and some abuses of public trust were punishable in the ordinary courts; but this fact did not deprive Parliament of the jurisdiction to punish them, in its discretion, by the process of impeachment.

It follows that, if the usual legal signification of the term "impeachment" that obtained when the Constitution was adopted is to be followed, General Belknap is subject to the jurisdiction of the Senate upon the articles preferred against him. He is charged with grave misconduct and corruption while in office, and he cannot escape the jurisdiction of the House to impeach and the Senate to try by a resignation of his office, if the common-law definition of impeachment is to prevail. That the expiration of the official term of the offender, whether by resignation or otherwise, does not put an end to this jurisdiction is shown by several cases, and notably by those of Hastings and Melville.

We are next to inquire whether the Constitution limits or modifies the impeachment known to the common law. In some important particulars it does alter and modify it.

First. In England the chief executive magistrate is not impeachable. Under our Constitution he is.

Second. In England all the Queen's subjects are impeachable. In the United States, Blount's case seems to hold that impeachment is confined to treason, bribery, or other high crimes and misdemeanors of civil officers, (the President and Vice-President included,) leaving military and naval officers to be dealt with by martial law.

Third. Peers are not under oath as judges when sitting as a court of impeachment. Senators are.

Fourth. In the House of Lords a majority convicts. In the Senate a "concurrence of two-thirds of the members present" is necessary to a conviction. (Constitution, article 1, section 3, paragraph 6.)

Fifth. The punishment to be inflicted by the House of Lords may extend to fine, imprisonment, corporal chastisement, loss of limb or even of life, according to the law of the land; for it must be *secundum non ultra legem.* (Selden's Judicature, 168, 171; Jefferson's Manual, 287.) But under our Constitution—

> Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law. (Constitution, article 1, section 3, paragraph 7.)

Sixth. The king's pardon cannot be pleaded in bar of an impeachment; but *after* conviction and judgment he may pardon. The presi-

dential power to pardon does not extend to cases of impeachment at all; and consequently his pardon, however effectual to prevent punishment in the ordinary courts, cannot be pleaded in bar of an impeachment or relieve the convicted offender from the sentence pronounced by the Senate.

In all these particulars, except the second, the changes made by the Constitution are apparent, and that suggested by the second particular seems to be established by Blount's case.

But it has been earnestly contended that it makes another and sweeping change, namely, that it confines impeachment to cases where the accused is in the office which he has abused at the time of his impeachment, conviction, and sentence; and that, consequently, if at any time before sentence he resign, the jurisdiction of the Senate is at an end and no judgment can be pronounced against him.

A proposition that makes the jurisdiction of the Senate depend upon the will of the accused, that would practically annihilate the power of impeachment in all cases of guilt clearly provable, and leave it to exist in those cases only that furnish no reason for its exercise, namely, cases in which guilt, if it exist, cannot be proved, or cases in which there is no guilt at all, is not to be admitted unless the terms of the Constitution are so explicit that it cannot reasonably be denied.

The constitutional provisions cited in support of the proposition are the following:

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to ho'd and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law. (Article 1, section 3, paragraph 7.)

The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. (Article 2, section 4.)

It is argued that this latter section is a designation of the persons who are subject to impeachment, and that they are all persons *in office;* and that consequently no jurisdiction in impeachment can exist against a person not in office. And it is further argued in support of this view that both the cited provisions contemplate a judgment of *removal from office* in *every* case of conviction, and therefore negative the idea of a judgment against a person not in office. And it is further said that the object of impeachment is to get rid of a corrupt or dangerous officer, and that when his term of office expires, whether by resignation or otherwise, that object is accomplished and there is no reason left for his impeachment.

And it is further contended that the clauses granting the power of impeachment ought to be strictly construed, because they are, as it is said, in derogation of the provisions of the fifth and sixth articles of amendment to the Constitution relating to criminal proceedings. These are, in brief, the grounds upon which the proposition in question is advocated, and which, it is claimed, fully sustain it. It is not pretended that any provision of the Constitution explicitly denies the power to impeach after the close of the offender's official term, but such a denial is sought to be established by argument and inference.

The question then arises, is the inference thus drawn a necessary one? for if it is not, it cannot with reason be contended that it ought to prevail, in view of the consequences already stated that would result from it. The grant of power to the House to impeach and to the Senate to try all impeachments is clear, and cannot be frittered away or essentially limited by subsequent provisions supposed to be repugnant unless the repugnancy is manifest. (Faw *vs.* Marsteller, 2 Cranch, 10.)

I do not contend that the well-known doctrine relating to repeals by implication on account of repugnancy obtains in construing the several provisions of the Constitution; but I do contend that all its provisions must, if possible, be interpreted so as to be in harmony with each other, and that, where it contains a grant of power in clear and unambiguous terms, other provisions are, if possible, to be construed so as to be consistent with such grant. And hence, if any provision is capable of two interpretations, one of which is consistent and the other inconsistent with such clear grant of power, the former is to be preferred. And here let me observe that this rule in nowise militates against the doctrine that, the Government being one of delegated powers, the Constitution ought to be strictly construed. I agree that it ought to be strictly construed; but a strict construction is one thing and a construction that annihilates or practically destroys one of its plain provisions is quite another thing. The former preserves the instrument in its integrity according to the intent of those who framed and those who adopted it, but the latter disregards that intent and performs an office of destruction and not of interpretation.

Bearing these principles in mind, let us turn to the provisions relied on by the defense and see whether they are necessarily repugnant to the previous general grant of power to prefer and try impeachments or whether they may be interpreted in harmony with that grant.

The first of these provisions is that already quoted, to wit:

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law.

The most obvious as well as the literal interpretation of this provision confines it to the subject of judgment. Its obvious intent was to deprive the Senate of the large discretionary power exercised by the House of Lords in the infliction of punishment, and to leave to the ordinary courts of justice the power to inflict those punishments which affect the property, liberty, or life of the accused. In this it is a great improvement upon the impeachment of the common law by removing from the procedure the possibility of those abuses by which it had too often been tarnished and disgraced. There is not a word in the provision that necessarily touches any jurisdiction of the Senate, except its jurisdiction to punish. There is not a word in it that literally, or by reasonable intendment, makes removal from office a necessary part of the sentence. If the accused be in office, the judgment may be removal without disqualification, or both removal and disqualification. If he be out of office, there can be no effective sentence of removal, but there may be a judgment of disqualification.

The remaining clause to be considered is section 4 of article 2:

The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

At first view it might seem that this section, like the provision just remarked upon, relates wholly to the judgment to be pronounced, and that its sole purpose is to make removal from office a necessary part of the sentence. But it seems to have been considered in Blount's case that its scope is not thus restricted and that other objects were also intended and are accomplished by it. The Senate in that case, whether correctly or not it is unnecessary now to decide, seems to have considered the section as an enumeration of the causes for which an impeachment will lie, and of the persons who commit the impeachable offense.

By this interpretation impeachment is confined to the treason, bribery, or other high crimes and misdemeanors of persons in civil office. But there is not a word in the section that expressly or by necessary intendment prescribes the time when impeachment may be instituted. Full effect is given to it when we say that the crime must be committed while the person is in office, and that, if he remain in office at the time of his conviction, he must be removed. But, whether in or out of office at the time of impeachment, he is liable to a sentence of disqualification to hold office which he cannot escape by the expiration of his official term. The language, "The President, Vice-President, and all civil officers of the United States," does not import that the persons holding these offices are to be impeached *as officers.* It is the *person* who is impeached, and all the section requires is that he shall have held the office when he committed the crime. The moment he commits it he becomes liable to impeachment, and the Constitution interposes no bar in the nature of a statute of limitations, either by the expiration of his term of office or otherwise, to prevent his punishment. His official character may be gone, but the criminal remains, and his disqualification may be as proper after as before he held official position.

This view might be illustrated by a reference to many criminal statutes, designed for the punishment of official misconduct, under which the crime must of course be committed by a person in office, but the indictment and punishment may be after the close of his official term. Some of these statutes were read in the argument of this cause and others will no doubt be referred to by Senators. I will merely cite one: Revised Statutes United States, sections 5501, 5502, 5503, 5504.

The interpretation I have given to the Constitution gives full effect to every clause in it and makes every provision harmonize with every other provision. The interpretation contended for by the defense makes the clauses discordant and repugnant, and reduces the great and solemn remedy of impeachment, designed for the protection of the Government and people against official crime and corruption, to a miserable absurdity. It introduces an anomaly unknown to civilized man, the doctrine that it belongs to the criminal and not to the Government whose laws he has offended and whose trust he has abused to say whether he shall be punished for his crimes.

It is vain to say that removal from office is the sole object of impeachment, when the Constitution itself authorizes a sentence of disqualification that may be as properly pronounced against the man who has left office as against him who clings to it. It is vain to say that impeachment is contrary to the spirit of the Constitution, since it is provided for in the Constitution itself. It is vain to say that it is liable to abuse, for that argument, if admitted, would take from government all its powers, since there is no one of them that is not thus liable. It is vain to say that it may be employed to harass and tyrannize over private men who have ceased to hold office, for the mode of procedure itself negatives the probability, nay, almost the possibility, of its being thus prostituted, to say nothing of the influence of public opinion that would inevitably condemn such an attempt.

A distinguished English jurist has described it as "a safeguard of public liberty well worthy of a free country and of so noble an institution as a free Parliament." (May's Parliamentary Practice, chapter 23.)

Hallam says:

Middlesex was unanimously convicted by the Peers. His impeachment was of the highest moment to the Commons, *as it restored forever that salutary constitutional right* which the single precedent of Lord Bacon might have been insufficient to establish against the ministers of the Crown. (1 Constitutional History, 372.)

And again:

The Commons had now been engaged for more than twenty years in a struggle to restore and to fortify their own and their fellow-subjects' liberties. They had ob-

tained in this period but one legislative measure of importance, the late declaratory act against monopolies. But they had rescued from disuse their ancient right of impeachment. (Idem., 373.)

Our fathers, like their English ancestors, regarded impeachment as a "safeguard of public liberty," and therefore provided for it in the Constitution, and so general has been this opinion and so proper has impeachment been considered for the repression of official corruption, that nearly every State constitution ever framed in the United States has also provided for it.

It follows from what I have said that in my opinion the articles of impeachment are sufficient in law, and do not need any support from the matters alleged in the subsequent pleadings of the House of Representatives; and that the plea to the jurisdiction of the defendant is insufficient, and ought to be overruled, and an order of *respondeat ouster* be entered.

Opinion of Mr. Wallace,

Delivered May 15, 1876.

Mr. WALLACE. The first question presented by the order of the Senate is: Is General Belknap amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office?

The proper solution of this question depends upon what is the true meaning of those provisions of the Constitution of the United States which vest the power of impeachment and regulate its exercise.

They are as follows:

First, the House of Representatives "shall have the sole power of impeachment." The last clause of section 2, article 1.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the President of the United States is tried the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Last two clauses of section 3, article 1.

The President shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

First clause of section 2, article 2.

The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Section 4, article 2.

The trial of all crimes, except in cases of impeachment, shall be by jury.

Last clause of section 2, article 3.

The Constitution is a frame of government, it is not a penal statute. It is not to be construed strictly, but it is to be so interpreted that the great objects contemplated in the enumerated powers given to the government it creates, may be attained. Each of the departments created, all of the powers specifically granted, are rounded, complete, and authoritative. No halting opinions, no half-way grant of power, no nerveless, weak, and impotent authority were vested by it in any case in which it expressly granted control to any of its departments. Whatever was necessary to the perfect use of the power specifically given is necessarily implied therefrom. These results naturally flow from the fact that the people created a government, independent and self-existing, and enumerated its powers, and it just as logically follows that in the vast field in which they gave it no power, the States and the people are the depositaries thereof. When it declares that "*the executive power* shall be vested in a President of the United States," it is implied that all things necessary to the complete exercise of that power was thereby granted to that office, subject only to the limitations of the Constitution itself. When it declares that "the *judicial power* of the *United States* shall be vested in one Supreme Court," &c., it implied that all things necessary to the full exercise of that power was thereby granted to that tribunal, qualified only by the limitations of the instrument itself. As great powers of the Government created, they were complete within the domain of authority granted. So, too, when the Constitution declares that "the House of Representatives shall have the *sole power of impeachment*" and that "the Senate shall have the power to try all impeachments," it implied all of the powers essential to the complete exercise of the authority granted, subject only to the limitations imposed upon that authority by the instrument itself. As the words "executive power" or "judicial power" have defined and distinct meaning under our system of laws and precedents, so the power of impeachment thereby given had a defined and distinct meaning.

Webster defines the word "to impeach" thus: "To cite before a tribunal for judgment of official misconduct." This meaning is clearly the proper one as applied to the proceeding either in Parliament or here. For centuries in England it was used as a means of judging and punishing *official* crime, and in very rare instances was it used upon private persons. It has never been used in this country or understood to apply to the trial or punishment of citizens for personal crime as distinguished from official misconduct. It was the power of "citing before a tribunal for judgment of official misconduct" which came to us with our system of jurisprudence from England, and this is what our Constitution plainly implies when it gave "the power of impeachment." If we trace this power through the early history of the colonies, this becomes apparent. Penn's frame of government in 1682, in the reign of Charles II, gave to us of Pennsylvania open courts, presentment by a grand jury, and a fair trial by a jury of twelve men, as near as may be peers or equals, while at the same time it gave the General Assembly power "to impeach criminals fit to be there impeached," and it vested the council with power to give "judgment upon criminals impeached," and required a two-thirds vote for their conviction. These are the very elements of the provisions of the Federal Constitution in regard to impeachment. Its first use in Pennsylvania was in 1706, when the house impeached James Logan, secretary of the province, for his conduct in *public* affairs and toward the house and its members.

The characteristics and proper use of this power as it existed and became a part of the Federal Constitution are plainly shown by the language of the first constitution of the Commonwealth of Pennsylvania. It was adopted by the convention that met in July, 1776, of which Dr. Franklin was the president. The whole scope and purpose of the "power of impeachment" were crystallized in that instrument when it gave to the house the power "to impeach *State* criminals" only, and to the president and his council the right to "sit as judges to hear and determine on impeachments," while it denied them the power of pardon in such cases. These, coupled with the distinct declaration that "*every officer of State, whether judicial or executive, shall be liable to be impeached by the General Assembly either when in office or after his resignation or removal for maladministration*," clearly define what the freemen of at least one State thought this power was when the Federal convention met. Under the constitutions of the States as they stood when the Federal convention met in 1787, the process had a defined and distinct meaning. In all of them in which the subject was named, nine in number, the house was made a grand inquest to impeach, and the senate or council or the senate and the judges made a tribunal to try. The offenses over which this jurisdiction was vested were official misconduct, maladministration, corruption in office, or offenses against the constitution, or some or all of them, and the power of pardon after conviction was denied to the executive. All of them were plainly embodied in the Federal Constitution. The provision limiting the judgment was copied from the words of the constitutions of New York, New Hampshire, and Massachusetts, and that of New York provided for the removal of the official *when* impeached and for filling the vacancy until he was acquitted or his successor was elected. In Virginia and Delaware the punishment was *disability, removal, or other penalty*, while in Pennsylvania and South Carolina no punishment was named, thus demonstrating that there were then other punishments contemplated than mere removal.

Assuming, then, that the "power of impeachment" as it then existed was the power "to cite before a tribunal for judgment of official misconduct," or, as we of Pennsylvania wrote it, "to cite *State* criminals while in office or after before a tribunal for maladministration," it now becomes necessary to inquire whether this authority, full, complete, and rounded as it then existed, given by the Federal Constitution to the House to cite and to the Senate to judge, has been limited, restricted, or shorn of any of its proportions by the words of the Constitution itself.

It is manifest that the last clause of section 3 of article 1 limited the *power to punish* and placed a barrier in the way of the infliction of any other punishment by the Senate than one purely political: "Judgment shall not extend *further* than to removal from office and disqualification" to hold office. It is equally manifest that these words, even in their most technical sense, do not limit or restrict either the power to impeach or to try. As well might it be said that the ordinary limitation of the extent of punishment prescribed by a penal statute limited the power of a grand jury to present or of the proper court to try an offense over which at common law it had jurisdiction. But it is argued that because this limitation as to the extent of the judgment contains both removal *and* disqualification, that as the Senate cannot impose both penalties upon one who is not in office, the necessary inference is that we can only try officials during their term. If it had been intended to limit the power to impeach to so narrow a field or if the exercise of the then existing view of this subject was to be restricted in the Federal Constitution, it is strange that such a limitation should be left to inference from language used in defining the power of punishment and should not be expressly declared or plainly implied from the terms used in vesting the power to impeach or to try. If the judgment of the Senate must be both and cannot be one or the other, and if these clauses of the Constitution are to be strictly construed, we are placed in the dilemma of finding no one upon whom this judgment of disqualification can operate; for "the President, Vice-President and all civil officers, *shall be removed from office*" are the words of section 4 of article 2, and this is the only penalty named therein.

By this latter section a specific punishment is imposed. There surely cannot be two punishments for the same offense in the same instrument; and hence it logically follows that disqualification cannot be imposed upon any of the officials named. It would be just as reasonable to argue that, because section 4, article 2, declares that the President shall be removed and omits to say that he shall be disqualified,

therefore he cannot be disqualified, as it is to argue that because section 3, article 1, names two punishments, we must impose both or neither. These provisions of the Constitution need no such absurd construction. The latter clause was a limitation of the extent of punishment; the former applied the principle that no man shall be punished until he is proved to be guilty, and was inserted to preserve in his hands the power there vested by the people until a competent tribunal had passed upon his guilt or innocence, as well as to declare his unfitness and compel his removal when convicted. These clauses are descriptive when applied to anything else than their plain purpose, and both of them leave the "*power* of impeachment" precisely as it stood when ingrafted on the Constitution.

The fourth section of article 2 is a limitation upon the power of impeachment so far as to prohibit the removal from office before conviction, but it does not pretend to restrict the authority given to the House and Senate in any other manner. It describes those who shall be punished when convicted, in general terms. "The President, Vice-President and all civil officers, shall be removed," are its words, but the command to remove the President when convicted does not, and even by a forced construction cannot, prohibit the impeachment, and, upon conviction, the *disqualification*, of one who *had been* President, for official crime, if the power to do so be given in other words of the instrument. The words here used are not apt, no necessary implication arises from the whole sentence, nor does a general view of all these provisions require or permit us to limit the express grant of the power of impeachment by this section.

We thus reach the conclusion that the *words* of the Constitution taken in their plain and ordinary meaning contain no restriction of or limitation upon the "power of impeachment" as it existed at the formation of the Constitution and entered into the government thereby created as a positive and valuable authority.

We now proceed to consider the effect that the construction contended for by the defendant would have upon the power granted and the government created.

It is apparent from what has been already said, as well as from the description of the leading crimes, "treason and bribery," and of the officials to be punished as the highest in the state, "the President and Vice-President," that the objects to be attained by the use of the power granted were the preservation of the integrity and purity of the Government from the temptations that surround those in power and the perpetual banishment from power of those who had betrayed or dishonored it. Official fidelity and official honesty were the ends sought. Forfeiture of official power and denial of the right to enjoy the marks of confidence of their fellows were the penalties which were meted to those crimes that in former times or in despotic governments were avenged by the knout, the bowstring, or the dripping ax of the headsman. But the defendant argues that if the corrupt official or the traitorous embassador do but resign his place before he is impeached, these penalties are useless and the power of disqualification is gone. Such an argument absolutely destroys the power of punishment with disqualification, for the guilty official will always resign to escape the consequences of his crime, and when he has resigned he is beyond the arm of the law. So absurd and fatuitous a result demonstrates the fallacy of the argument.

It is urged that unless this construction be placed upon the Constitution, impeachments may follow during his whole life any one who has held office and that the passions of political factions will use this weapon to avenge themselves upon their adversaries. It is always safe to trust the people. They will not approve or authorize an unjust or improper use of this power, and the keen sense of parties as to their approval or disapproval will be a sufficient restraint upon those who have power in their attempt to punish for venial offenses those who have lost it. If an officer *has* been corrupt his crime should follow him. If he has prostituted his high place for gain or betrayed his country, no statute of limitations can be or ought to be interposed for his protection. A rigid rule of official accountability is imperatively demanded in the public service. Proofs of this fact are now abundant, and our highest duty to the state demands the enforcement of every mode of compelling official fidelity. He who owes the Government a debt has no presumption of payment in his favor. The statute of limitations does not run against the state. So he who owes the Government and the people faithful and honest performance of the duties his trust clothes him with, should have no statute or construction for his protec tion. He takes the office with its grave responsibilities, and only with his life can those responsibilities be shaken off. The close of his official term does not, and it ought not to shield the political criminal. The Constitution has no limitations for the immunity of any such offenders, but it demands of all its officials purity, honesty, and fidelity, and it is plain enough and strong enough to enforce its demands at all times and upon every class of those who enjoy its high places.

The construction claimed by the defendant's counsel, if tested by the action of those who made the Constitution and administered the Government up to 1867, would also have the effect of utterly ignoring the denial to the President of the power of pardon in cases of impeachment. The first clause of section 2, article 2, expressly denies to the President this right, and yet for nearly eighty years the exercise of the power of removal was the exercise of the pardoning power, and that, too, the most odious and dangerous form of that power—a previous pardon. Until the passage of the tenure-of-office act, the construction contended for permitted the President, without the consent of the Senate, to remove his traitorous or corrupt officials, and thus to put them beyond the jurisdiction of the Senate, condone their offenses, and negative one of the plainest provisions of the Constitution. It would necessarily follow such a construction that the power of impeachment would be subject to the whim or caprice of both the President and the accused. The former could remove, and thus pardon; the latter could resign, and escape disqualification. Surely such was not the belief of such men as Jared Ingersoll, James Wilson, or Dr. Franklin, who came to the Federal convention with the full knowledge that the constitution of their own State expressly negatived any such construction, and distinctly declared that an official could be impeached *after* the expiration of his term, and that one impeached could not be pardoned by the Executive.

From the precedents and history of the power itself, from the necessary implication that follows the words which vest the power, from the absence of any limitation in the words of the Constitution upon the power to cite and to judge, and from the absurd and dangerous results that flow from any other construction, I reach the conclusion that General Belknap is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office, and therefore vote to require him to answer over.

The view which I take of the question considered leaves the remaining ones immaterial.

Opinion of Mr. Morton,

Delivered May 15, 1876.

Mr. MORTON. The constitutional provisions in regard to impeachment can be better understood by grouping them in their natural order. They are now separated into different articles and sections; but that does not affect the sense.

First—

The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Second—

The House of Representatives shall have the sole power of impeachment.

Third—

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

Fourth—

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

The first provision declares that the President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, &c. This provision carries with it the power of impeachment for the purpose of removal from office.

The declaration that the President and other civil officers of the United States shall be removed from office upon impeachment and conviction for treason, &c., by necessary implication carries with it the power of impeachment for that purpose. In itself it gives to Congress the power to initiate, try, and execute an impeachment to remove the officers named. The sole purpose for which impeachment is authorized by this provision is to remove persons from office, and it cannot be extended by inference to persons not in office. It does not say that persons may be impeached and removed from office, but that certain officers shall be removed by impeachment and conviction for treason, &c. It mentions impeachment only as the means for removal from office. It does not speak of impeachment with removal from office as an incident, but only as the means by which removal is to be accomplished. It will not be contended that this provision gives the power for impeachment for any purpose but to remove from office, and, if there be any power to impeach a person not in office, it must be sought elsewhere.

The next provision declares—

The House of Representatives shall have the sole power of impeachment.

This provides simply that the House shall inaugurate and prosecute impeachments. It defines the office of the House in connection with an impeachment as distinguished from the Senate, but does not assume to determine the causes for which, or the persons against whom, an impeachment may be prosecuted.

Impeachment is a proceeding in which both Houses participate, and this designates the part to be performed by the House.

To the argument that this clause not only designates the part which the House is to take in the proceeding by impeachment, but gives to the House general jurisdiction over persons and the subject-matter, it may be answered that the Senate determined just the other way in the Blount case. In that case it was held that the jurisdiction of the House and Senate in impeachment was absolutely limited by the fourth section of the third article to the President, Vice-President, and

civil officers of the United States, so that putting the two clauses together they would read thus:

> The House of Representatives shall have the sole power of impeachment of the President, Vice-President, and civil officers of the United States, who, upon conviction, shall be removed from office.

This fourth section of the second article, which has been recognized as a limitation of the officers who may be impeached, speaks of them only as existing officers, and refers to impeachments simply as the method by which they may be removed.

The third provision, which I have quoted, declares that the Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the President of the United States is tried the Chief Justice of the United States shall preside, and no person shall be convicted without the concurrence of two-thirds of the members present.

This defines the powers and the duties of the Senate in connection with impeachments. As the House has the sole power to prosecute impeachments, this declares the Senate shall have the sole power to try. The use of the word "sole" in each provision shows that the powers and duties of each House are exclusive of the other, and that this provision simply designates the part which the Senate shall perform in the proceedings of impeachments and regulates its action in such performance.

The Senate has the power to try all impeachments which the House has the power to present.

Neither the provision in regard to the House or the Senate assumes to define the persons or the purpose for which the one may present and the other may try. The provisions that the Chief Justice shall preside and that the concurrence of two-thirds is necessary to convict simply regulate the procedure, and have nothing to do with the question of jurisdiction.

Against what persons and for what causes may the House present articles of impeachment? I answer against officers of the United States to remove them from office as specified in the first section quoted. If the jurisdiction of the House extends beyond the persons and the purpose specified in the preceding section, it must be derived from a source outside of the Constitution, which would be the common law of England, and this would give to the House all the jurisdiction possessed by the House of Commons. If this view be adopted, the preceding section gives to the House of Representatives but a small part of the jurisdiction it possesses, and renders that section wholly unnecessary, for the House would have, anyhow, like the House of Commons, power to remove from office by impeachment; and in this connection it may be observed that the House of Commons has in all cases of conviction on impeachment of persons in office made removal a part of its judgment.

The express authority given to Congress to prosecute and try impeachments in certain cases is in effect the denial of power in all other cases. This seems to be the universal rule applied in the construction of the Constitution. Congress only has those powers which are expressly conferred or which are necessary to carry out those expressly conferred, and does not upon this subject or upon any other inherit powers not granted which belong to the Parliament of England. The common law of England has been adopted to a certain extent by statutes both in the nation and in all the States but one or two. The jurisdiction of all the courts, whether of the nation or of the States, is determined altogether by constitutions and statutes. It is well established both in the nation and the States that the courts have no common-law criminal jurisdiction, and that there are no common-law crimes. Crimes are created alone by special enactment of national and State legislatures. In the use of terms and the construction of statutes, common-law definitions and rules are resorted to as guides only. The rules of evidence and methods of proceeding are borrowed in large part from the common law; but it may be stated as a principle to which there is no exception, in both the nation and the States, that crimes are created and exist only by statute, and that the jurisdiction of courts is established and defined only by constitutions or statutes. The idea that the Congress of the United States has jurisdiction in cases of impeachment which is not specially conferred by the Constitution, or that it is not necessary to the execution of some power or duty enjoined upon Congress by the Constitution, is at variance with every principle of construction that has been applied to it.

The fourth provision says "judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law."

This defines and limits the judgment that may be rendered. It declares that—

> Judgment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Taken in connection with the first provision I have quoted, it makes removal from office an indispensable part of the judgment in all cases of conviction, while disqualification to hold and enjoy any office of honor, trust, or profit is an incident which may or may not be added by the Senate in its discretion. If a person not in office were impeached and convicted and the Senate should be of the opinion that the offenses were not such as to make disqualification a part of the judgment, then there could be no judgment at all, for the judgment of removal when the person was out of the office when the proceeding was commenced would be an absurdity too glaring to be considered. The argument made by the managers that the Senate may have jurisdiction to try and convict in a case where no judgment can be rendered may be considered a *reductio ad absurdum* in constitutional law.

The last clause of the provision I have just quoted is conclusive upon this question. It declares:

> The party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

If there had been room to doubt before, there is none after this provision. It strips the proceeding by impeachment of all purpose for punishment and leaves it simply as the means of removal from office. It provides that in all cases of impeachment the party convicted shall be liable and subject to indictment, trial, judgment, and punishment according to law. Though the Senate may remove from office and disqualify the party convicted from holding any office under the United States during the term of his natural life, yet such conviction and judgment cannot be pleaded in bar of punishment in the courts. The right of the courts to punish in all cases is reserved, and we cannot conceive that any power of punishment is left in Congress unless it was the intention of the Constitution that a man might be punished twice for the same offense. Such a supposition is not to be entertained for a moment.

The principle that a man cannot be punished twice for the same offense runs through our Constitution and through the constitutions and laws of all the States. It was a right secured to the English people in their early history, and has not for hundreds of years been violated by the parliaments or the courts. Under the English constitution the Parliament is omnipotent and may absorb the whole criminal jurisdiction of the kingdom. It may assume to punish any man for any offense, whether committed in or out of office. Parliament assumes not only the power to remove from office, but to punish for the crime committed. This punishment was often by death, by forfeitures of goods, by attainting the blood, and by banishment from the realm. It extended to persons out of office as well as to those in office. It became a source of the greatest crimes in English history, and it was wisely determined by our fathers in the establishment of Government to dig it up by the roots as an instrument of revenge or punishment. But while impeachment under the English constitution was a prolific source of the greatest crimes, be it said to the honor of the English nation that it was never made to violate the principle "that a man shall not be punished twice for the same offense." If a person were punished by Parliament, he was not afterward punished by the courts for the same crime. If punished by the courts, he was not afterward punished by Parliament. When, therefore the Constitution of the United States provided that the court should have the power to punish crimes committed in office in all cases, and that the judgment of impeachment could not in any case be pleaded in bar, it was a declaration which cannot be misunderstood, that an impeachment is never to be used for punishment, and that its sole purpose is to remove bad men from office.

The right being reserved to the courts to punish by indictment in all cases, if the Senate now, as a matter of punishment, may inflict upon William W. Belknap the disqualification for holding office during the whole or any portion of his life it would clearly subject him to punishment twice for the same offense, because the courts, by the express provision of the Constitution, may go on and punish him again the next day. The fact that different tribunals may inflict different punishments for the same offense does not at all affect the principle, for it is still double punishment. Suppose, for example, that one statute in New York should punish the crime of forgery by imprisonment, another statute should be passed giving to another tribunal the power to punish the same offense by fine; still the punishments, although different, would be for the same offense, clearly in violation of constitutional right.

My conclusion from the foregoing considerations is that the sole purpose of impeachment under our Constitution is the removal of offenders from office, and that, as William W. Belknap was not in office when this proceeding was instituted by the House, the Senate has no jurisdiction whatever over his offenses, and that punishment under the Constitution is left entirely to the courts.

Opinion of Mr. Frelinghuysen,

Delivered May 15, 1876.

Mr. FRELINGHUYSEN. Mr. President, I will first call attention to a consideration which has been much pressed upon the Senate, but which is not involved in the question before us, namely: Whether an officer can resign after he is impeached and thus oust jurisdiction.

I will, secondly, consider the true question we are to decide, namely: Have we jurisdiction in this case?

I. The Senate is not called upon to decide whether the resignation of a civil officer after articles of impeachment have been presented against him ousts the jurisdiction of the Senate and deprives it of

the power to try the impeachment. That case is not before us. William W. Belknap *had* resigned the office of Secretary of War, and his resignation had been duly accepted before the House of Representatives impeached him. The suggestion that, inasmuch as the resignation and the impeachment were made on the same day, the law will not take notice of the fact that the resignation was in point of time prior to the impeachment, because the law ignores fractions of days, is unsound. The law *does* observe fractions of days, whenever any right depends upon its doing so. The law never causes or suffers a citizen to suffer anything by a fiction. Abundant authority and examples to sustain this position could be adduced were it necessary.

But if the question was whether Belknap could have avoided the jurisdiction of the Senate by resigning his office after he had been impeached by the House, much might be said against such a claim. As that question is not before the Senate, I will give no opinion on it. Were it here, it might be argued thus:

It is essential to every investigation that there be some point of time to which the tribunal shall direct its inquiries as to the truth of the facts alleged. That point of time in civil actions is the service of the original process; in criminal proceedings it is the finding of the indictment; and in proceedings for the judgment of impeachment, it is the time of the impeachment by the House. If the action be to eject from lands, the abandoning or vacating the possession of the land after the process is served cannot be pleaded with effect in bar of the suit; but the suit proceeds to a judgment of eviction and for mesne profits and costs as if possession had been retained. If the action is for a nuisance, the judgment is that the nuisance be abated, even although the nuisance was removed immediately after the suit was commenced. If the judgment be for damages for neglecting some duty, such as the execution of an instrument, performance after the suit has been commenced cannot be pleaded with effect as a bar to the action. If the proceeding be by indictment, say against an accessory, the State cannot sustain its charge by proving that defendant, after indictment found, aided the principal to escape. That fact, at most, could only be proven as persuasive evidence of the substantive fact averred in the indictment. In no legal proceeding will any act of the defendant after the suit is commenced, even though it should be the performance of the very thing sought by the suit, be a bar to the action, unless it be accepted by the party who of right is enforcing the duty.

If the House of Representatives had the right to impeach when they presented their articles and thus commenced proceedings, the act of the respondent or of the President could not be pleaded as a bar to the proceeding. Neither can it be said, if the House had the right to impeach at the time they presented the articles, that it is absurd or incongruous that the judgment of removal from office, which under the Constitution must be pronounced on conviction, should be entered against one who, since the articles were so presented, has resigned the office. The right of the House to that judgment existed, if at all, when the proceedings were properly commenced, and all action of the respondent subsequent thereto is, in the eye of the law, in this, as in all like cases, ignored. The House stands before the Senate with all the rights that other suitors have before other courts. Every affirmative judgment in civil or criminal proceedings is a mere judicial declaration of the existence of the right of the actor in the suit to be sustained and assured in the claim made when the legal proceedings were commenced. Where, I ask, would be the incongruity of a judgment of the Senate were it customary to make up a judgment-roll which should in substance read thus:

"William W. Belknap having on the 2d of March, 1876, been impeached by the House of Representatives for high crimes, and the Senate having, on the demand of the House, proceeded to try the truth of the several articles of impeachment so presented, the Senate do, on this —— day of ——, 1876, adjudge that the said articles are sustained, and do pronounce as their judgment that the said William W. Belknap be removed from office, and that he be perpetually disqualified from holding any office of honor, trust, or profit under the United States."

There would be no incongruity between the judgment and the record, even though it appear that between the time the proceedings by the House were commenced and the rendition of the judgment William W. Belknap had resigned his office. He, by the hypothesis, was an officer when impeached by the House. The evidence had extended to that point of time and not beyond it. Was he, then, guilty had been the question throughout, and the judgment of the Senate in sustaining the claim of the House speaks as of the day the proceedings were commenced. Such a judgment would be no more incongruous than that of a court which, having ascertained that a defendant was in possession of lands when the ejectment was commenced, and that the right of possession was then in the plaintiff, pronounced a judgment that the plaintiff recover, notwithstanding the defendant may have pleaded that he had abandoned the possession. Such a judgment would be no more incongruous than a judgment of six cents and costs against a defendant who, having at the time suit was commenced made default in the execution of an instrument it was his duty to have executed, should make it appear that he did execute it the day after process was served.

It might, in fact, be claimed that the argument in favor of the right of the House to retain jurisdiction, notwithstanding a resignation after the impeachment proceedings were commenced, was much stronger than in the cases supposed. The right of the House is to retain jurisdiction to satisfy their double demand, to wit, that the officer be removed, and that he also be disqualified. It would be a strange ruling which should hold that when jurisdiction had vested by the proceedings being commenced while the official was in office, it was divested by his complying with only half of the demand of the actor in the proceedings, to wit, "removal from office," while the demand for "disqualification" is entirely unsatisfied and forever defeated, because the Constitution only authorizes a judgment of disqualification as an incident to, and as coupled with, a judgment of removal.

If the jurisdiction of the court depended on the parties, plaintiff and defendant, being residents of different States, the fact that the defendant the day after suit was commenced became a resident of the same State in which the plaintiff resided would not affect the jurisdiction. When the jurisdiction of a Federal court depends on the fact that one of several defendants resides in a different State from that in which the plaintiff resides, the death of that defendant does not oust the court of jurisdiction. When jurisdiction has attached, it continues to the end. Jurisdiction attaches, if at all, under and by reason of the circumstances that exist when the proceedings are commenced, and no subsequent act but such as extinguishes the claim or abates the suit can divest that jurisdiction And a judgment which is in harmony with the facts and conditions which exist at the time the proceedings are commenced cannot be called incongruous. Justice Story, who, as we shall see, holds that an officer cannot be impeached except while he is in office, gives no effect on the question of jurisdiction to his resignation after he is impeached. He says: "If, then, there must be a judgment of removal from office, it would seem to follow that the Constitution contemplated that the party was still in office *at the time of the impeachment.* (2 Story on the Constitution, § 801.) And by military law, while one who, by reason of his term of enlistment having expired, is entitled to his discharge from the service is not afterward subject to a court-martial, yet if proceedings are commenced against him before he is so entitled to his discharge they continue after his term of enlistment expires. (De Hart's Military Law, page 35.) I do not mean to say, however, that resignation of office or its termination by lapse of time while proceedings are pending may not, either upon a plea of *puis darrein continuance* or a mere suggestion on the record, be specially recited in the judgment so as to correspond with the facts of the case. This would not interfere with the jurisdiction of the court to pronounce the constitutional judgment of removal and disqualification. Nor do I mean to say that the judgment would relate to the time of impeachment to such an extent as to render void the official acts of the officer while proceedings for impeachment were pending. The *actual* removal from office is only effected by conviction and judgment.

But, as before said, on the question whether one who is impeached by the House while in office can divest the jurisdiction of the Senate by resignation it is not necessary to give an opinion, because that is not before us. It is clear that much is to be said when that case arises. Enough has been said to show that it is very different from the question whether the House can impeach and whether the Senate have jurisdiction over one who at the time of the impeachment had ceased to be a civil officer.

And in determining the true question before us we need not be influenced by the equivocal and undignified position the two branches of the legislative department of the Government would find themselves in if, after the presentation of articles, after a protracted trial, and after deliberate consultation, and when the Senate was just about to pronounce its judgment, the accused could thwart the whole proceedings by a summary resignation. This consideration, presented to our sense of judicial propriety so frequently and with so much address by the managers, does not belong to this case. When the question of the effect of a resignation made after impeachment arises it will be decided.

We have now to do with the effect of a resignation, not after, but before an impeachment by the House.

II. Has the Senate sitting as a court of impeachment jurisdiction to try a citizen whom the House of Representatives claim to have impeached, such impeachment by the House being made when he had ceased to be a civil officer.

The procedure by impeachment was imported into our Constitution from the common parliamentary law of England, but it was placed there clipped and pruned of very many of its baneful incidents. Impeachment, associated with bills of attainder and of pains and penalties and *ex post facto* laws, was made in Great Britain an instrument of political persecution and partisan aggrandizement. It was through those agencies that the grossest injustice was perpetrated in the name of law; that men of political power were destroyed; that families of influence were blotted out, and that their estates were confiscated to become a reward to those who persecuted those who owned them.

Bills of attainder, which term includes bills of pains and penalties (1 Story on the Constitution, § 1344; Cummings *vs.* State of Missouri, 4 Wallace 323) were sometimes directed against whole classes of people without naming the individuals. They were sentences pronounced by the legislative instead of the judicial branch of the government. They were often pronounced without evidence, on the surmise or on the clamor, as the old books term it, of the Commons. The investigation, if any, was in the absence of the accused, without his having

counsel, and without any recognition of the rules of evidence. The punishment, which was often the deprivation of estate, of inheritable blood, and of life, was determined by no pre-existing law.

Ex post facto laws imposed punishments for acts which were innocent at the time they were performed, or greatly changed and increased the punishments after the act punished was done.

Impeachments extended to other than officers of the government and to acts that no law had declared criminal. And without counsel, witnesses, or jury, a mere majority of the Lords often pronounced the judgment of banishment and often of death against the accused.

Justice Miller, in speaking of the manner in which the framers of the Constitution regarded bills of attainder and of pains and penalties and *ex post facto* laws, says:

> It is no cause of wonder that men who had just passed successfully through a desperate struggle in behalf of civil liberty should feel a detestation for legislation of which these are the prominent features. (*Ex parte* Garland, 4 Wallace, page 388.)

And Justice Story, in speaking of the men who framed the Constitution and modified the English procedure by *impeachment*, says:

> History had sufficiently admonished them that the power of impeachment had been thus mischievously and inordinately applied in other ages; and it was not safe to disregard those lessons which it had left for our instruction written not unfrequently in blood. He then refers to cases where the final overthrow and capital execution of the accused was the result of political resentment. (Story on the Constitution, § 784.)

England had no written constitution, and Parliament was omnipotent; and each political party as it rose to power made use of this machinery of attainder, pains and penalties, *ex post facto* laws, and impeachments to oppress and weaken the rival party. The fathers of our Republic, familiar with the history of England, to escape these atrocities perpetrated in the name of law, determined that this nation *should have* a written constitution. They determined that the national Legislature should *not be* omnipotent, but that it should only possess delegated powers, reserving expressly to the States and to the people all other powers. So careful were they on this point that they even provided that the enumeration in the Constitution of the rights which belonged to the people should not be construed to deny or disparage such rights as were not enumerated in the Constitution.

As to these legalized agencies of tyranny, the framers of the Constitution provided, by article 1, section 9, that Congress should not, and by section 10, that the States should not, pass any bills of attainder, and this includes bills of pains and penalties. And as those provisions did not reach the judiciary, they provided, by article 3, section 3, that no attainder of treason should work a forfeiture except during the life of the person attainted. As to *ex post facto* laws, they prohibited their passage both to Congress and to the States.

And what did they provide as to the *procedure by impeachment*? They omitted to abolish or prohibit it, simply because that instrumentality was indispensable to a well-organized government. A President might be convicted of manslaughter, but that would not divest him of the presidential office. The Secretary of the Treasury might be sentenced for the crime of bribery, but he might still remain Secretary of the Treasury. The sentence of a judicial tribunal would not necessarily deprive any civil officer of his office. It was not desirable that the political power of removing from office should be given to the judiciary. Therefore, just as the House and the Senate were by the Constitution possessed with the right by a two-thirds vote to expel any member, so any civil officer, under greater restrictions than those incident to the expulsion of members of Congress, might, on impeachment, by a two-thirds vote of the Senate, be removed from office. It is clear that but for this necessity the procedure by impeachment would never have been found in the Constitution.

The framers of the Constitution, however, in placing even the limited powers of impeachment in the Constitution were careful to divest it of its historic powers for oppression and tyranny. Let us be careful not to destroy the guards our fathers placed around this power.

They first provided that the House of Representatives should have the *sole* power of impeachment. It is provided that the House alone shall have the sole power to impeach, because there are cases where the Commons and the Lords joined in the impeachment and then the Lords tried the articles. (Selden's Judicature of Parliament, page 38.) So gross an outrage on justice as that of making the accuser and the judge identical it was determined to forbid by the provision that the House should have the *sole* power to impeach. And it is strange indeed that these words, inserted for so plain and salutary a purpose, should have been, as they have been, wrested from their purpose and are claimed to have the effect of importing into the Constitution the whole common parliamentary law of Great Britain relative to impeachment, and that by force of this provision persons not civil officers are subject to impeachment by the House, and that the Senate are to try those whom the House may impeach, and that this impeachment extends to military as well as civil officers, and to the citizen as well as to the officer.

If any one considers these words so pregnant with meaning his opinion will probably be reversed as we proceed very briefly to consider the provisions of the Constitution.

They also provided that the Senate should have the *sole* power to try impeachments. This provision was inserted for a like reason as the former. Bills of attainder and pains and penalties, which were legislative conviction, were the work of both Houses of Parliament. And there are cases where the house had even assumed to convict on impeachment. And it was intended that it should be clearly understood that the Senate alone, in a judicial and not legislative capacity, was to try the charges which the House alone could make.

In England every description of person of both sexes was subject to impeachment. As the object in retaining the procedure in the Constitution was the removal from office, the Constitution restricted impeachment in its exercise to the President, the Vice-President, and all civil officers "of the United States." I say restricted the power to those named, because, as the powers of the Constitution are delegated and limited, they can extend no further than is expressed. Unless the provision of the Constitution which declares that "the House of Representatives shall have the sole power of impeachment" imports into the Constitution the entire power of impeachment as it existed under the common parliamentary law of England, it is certainly true that the fourth section of the second article, providing that the President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors, has the same significance as if it stated that no one, excepting the President, Vice-President, and all other civil officers of the United States, shall be liable to impeachment. A person who has duly resigned his civil office before any jurisdiction in impeachment has attached is no more a civil officer than he was before he entered upon the office.

The purpose of the framers of the Constitution was specifically to define who should be subject to impeachment, so as, in view of the scope of impeachment in England, to exclude those they intended should not be so subject. Had they intended to subject to impeachment not only those in office but the larger number of those who ever have been, they would have said so. At all events it is true, according to the established rule of construing a penal provision, that it must be so said before we can by any authority hold that an unmentioned class are subject criminally. Persons not in civil office are not civil officers, and so do not come within the *descriptio personæ* of the Constitution.

In harmony with the provision that only persons in office at the time they are impeached are liable to impeachment is the mandatory provision of the Constitution that the President and Vice-President and all civil officers *shall*, on impeachment and conviction of the crimes named, be *removed from* office.

Nothing can be more incongruous than that a person who is in no office at the time the House impeaches, which is the time to which the judgment must relate, and when the jurisdiction attaches, should be subject to a judgment that he be removed from office.

In still further harmony with the provision that only those in office can be impeached is the provision that judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold or enjoy any office of honor, trust, or profit under the United States. This provision is introduced in view of the past history of impeachment, where forfeiture, banishment, and death were not unfrequently imposed. The provisions of the Constitution relative to the judgment that may be rendered, taken together, amount to this: The judgment shall be removal from office or removal from office and disqualification.

The judgment of disqualification cannot be severed from that of removal any more than a judge can pronounce as a sentence a less penalty than the minimum prescribed. So both the judgment for removal and the judgment of disqualification require that the person proceeded against be in office when the impeachment is made by the House, to which point of time the judgment relates.

I do not see how the Constitution could more plainly have stated that it intended to circumscribe the ancient procedure by impeachment and intended that under our system it should be restricted to those in office when impeached than by saying in effect, first, that it should be restricted to the President, Vice-President, and all civil officers, (for that is what it does say, inasmuch as those words are found in a constitution of delegated powers,) and by secondly saying that the judgment in impeachment shall be removal from office or removal from office *and* disqualification.

Again, if impeachment is applicable to those not in office, it must be so applicable as a means of imposing punishment for offenses committed while in office.

But this cannot be so, because the exclusive province of impeachment, as found in our Constitution, is the protection of civil office from vicious men. The judgment must be removal, and, as an incident thereto, may be disqualification. The object of impeachment is in no legal sense punishment. Removal from office and disqualification inflict mortification and suffering; but this is in no true sense punishment; it is rather an incident to than the object of the judgment. The pains thus inflicted are always less severe the more abandoned and vicious is the subject of it, and this is the reverse of the rule upon which punishment is imposed.

The greatest abuse of this procedure in England arose from making punishment the end of impeachment; and hence it is that the Constitution contains the prohibition against any further judgment than removal and disqualification, and, to show that punishment is not the object of the Constitution in that connection, it immediately adds:

> But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

To claim that the object of impeachment is punishment is to claim that the Constitution is inconsistent with itself.

If disqualification is a punishment, it is an infamous punishment; and, if so, the offense for which it is imposed is infamous; for the character of the punishment is always held to classify the crime. But the Constitution provides (article 5) that no person shall be held to answer for an infamous crime unless on a presentation or indictment of a grand jury. Here is no such indictment, and yet there is, in fact, no inconsistency in the Constitution, because this procedure is not to punish crime; it is to protect the civil offices of the nation. It makes other provision for the punishment of crime, so as not to be misunderstood.

Again, it is contrary to natural justice and to the expressed spirit, if not letter, of the Constitution, and contrary to the common law, that one should be twice punished for the same offense, because the law in each case demands full expiation; but here it is claimed that one is to be punished by the Senate, and then, by the express provision of the Constitution, is to be fully punished in the courts. We impose no punishments; we simply protect the offices of the Republic from bad men.

Again, the Constitution provides that in all criminal prosecutions the accused shall have a trial by jury, and shall have such trial in the district where the crime was committed. If the proceeding by impeachment is for punishment, it is for the punishment of a crime, and hence comes within the provision of the Constitution which extends to "all criminal prosecutions," and the accused would be entitled to a jury, which is denied him.

There are two criminals before us convicted on impeachments: one is convicted of a treason that has shaken the pillars of the Republic and decimated the land by death; the other is a poor postmaster, who under temptation has appropriated a few stamps; and we are to impose the punishment, and we sentence each to removal from office and disqualification. The claim that our judgment is in any legal sense punishment seems to me an absurdity.

But if the object of the procedure by impeachment is not punishment, what is it that gives us jurisdiction over one out of office? It is not to remove from office, for that is an impossibility. It is not to pronounce a judgment of disqualification, for that the Constitution tells us only extends to one who is a civil officer, and also tells us that the judgment of disqualification must be coupled with a judgment of removal. We have no more authority to pronounce a separate judgment of disqualification than would a judge have to impose a penalty of only $50 for larceny when the statute said the penalty should be twenty days' imprisonment and $50 fine.

No express provision can be found in the Constitution extending impeachment by the House to those who are *not*, but have been, civil officers, unless, as before stated, the provision that the House shall have the *sole* power of impeachment imports the whole English system with all its atrocities into our Government. Not only so, but the express provisions of a Constitution conferring limited powers negative such a claim.

If impeachment can be extended to those who have been in office it must be by implication, by inference, and because incident to some power that is conferred and because of its marked propriety.

Can any one believe that the framers of the Constitution, with the history of impeachment and its associate legal instrumentalities before their minds, while they were providing against its being used as an instrument of tyranny by carefully restricting the penalty, when they knew it had been used as a means of political oppression—can any believe that it was their intention, or, more properly, that it is the true intent of the Constitution, when it does not so declare, that impeachments may be resorted to by the successful political party to disable the party defeated from rallying for another contest; that it was intended to place in the Constitution an instrumentality by means of which a popular leader, who perhaps alone could rally the party out of power, could be destroyed; that it is the intent of the Constitution that when the archives have passed into the custody of political opponents, papers misplaced, lost, or intentionally suppressed, that then one who had been honored by the people, had laid down his office without any charge against him, that then he should be called upon, away from his district, without jury, no matter what the lapse of time, to answer a charge the penalty of which is perpetual infamy? My regard for the interests of this nation's future, as well as my sense of justice, were I at liberty, in the absence of any such provision, to have any judgment on the subject, would revolt at any such conclusion.

But it may be said that if an officer cannot be impeached after he is out of office the guilty officer will defeat the provision of the Constitution by resigning when he finds he is about to be impeached; that he may then be elected again; and so a vicious officer hold place.

I answer that if he resigns, removal, the main object of impeachment, is effected.

He is not likely to be elected again; the interests of the nation are safe with the people and with that public sentiment which they create. But, besides, a remedy for this objection can readily be provided by statute by adding the penalty of disqualification to hold office on any one who shall be convicted of crime while in or which relates to any civil office. We have now such a penalty on our statutes as to some crimes.

The provisions of the Constitution on this subject are very few and plain, and may be thus stated:

The Constitution provides—

First. Who may impeach, namely, the House only.

Second. Who may try, namely, the Senate only.

Third. For what impeachment may be presented, namely, for treason, bribery, or other high crimes and misdemeanors.

Fourth. What shall be the judgment, namely, removal from office or removal from office and disqualification.

Fifth. Who may be impeached, namely, the President, Vice-President, and all civil officers of the United States.

In the light of these express provisions it is strange that any one should claim that the provision that "the House of Representatives shall have the *sole* power of impeachment" has the effect of importing the entire English system of impeachment, and that consequently one need not be in office to be subject to the proceeding.

We have been referred to a few authorities on this subject. Rawle, in his work on the Constitution, says, "It is obvious that impeachment extends only to those in office or to those who have been;" and this is claimed to be an authority in favor of the right to impeach one who has ceased to be an officer. I do not so understand it. Mr. Rawle directly negatives the idea that the impeachment procedure of Great Britain has any place in our Constitution, by saying it is restricted to those who are or who have been *in office*. Again, he is stating a limitation, and says in the *alternate* that it is obvious that the power of impeachment extends "only to those in office or to those who have been." That few will question.

The Blount case has been referred to. It is this: It appears that Blount was a Senator and had been expelled. His counsel pleaded: 1. That senatorship was not an office. 2. That he was no longer a Senator. It was decided that the Senate had not jurisdiction. Will any one claim that, if the common parliamentary law of England had been introduced into our Constitution by its provision that "the House of Representatives shall have the sole power of impeachment," the Senate would not have had jurisdiction over Mr. Blount's case? It would unquestionably have had jurisdiction.

Barnard's case has been referred to. He was in a civil office when impeached; the judgment of removal was the very judgment that was needed; and the fact that his offense was committed during a prior term separated from its then existing term only by an imaginary point of time does not affect the question. There is no provision of the Constitution that I know of that would prevent a civil officer from being impeached while in office for a crime committed before he became such officer.

Kent, in his Commentaries, (volume 1, pages 288 and 289,) treats impeachment simply as a procedure for the removal of civil officers who have been guilty of crime.

The convention that formed the present constitution of New Jersey had submitted to it by its committee provisions relative to impeachment identical with those of the Constitution of the United States. On motion of Chief Justice Hornblower, that convention composed of distinguished jurists extended the liability of civil officers for two years after the expiration of their term, thereby showing that in their opinion the liability to impeachment under the Federal Constitution was only while in office.

Nearly ninety years have passed since the adoption of our Constitution, and it does not appear that the procedure by impeachment has in any State of the Union or under the Federal Government been invoked against any one who was not in office.

Proceedings in impeachment in the States and under the General Government have been commenced and have uniformly been discontinued on the resignation of the accused.

Justice Story, in his Commentaries on the Constitution, gives the most thorough dissertation on the subject of impeachment that is anywhere to be found. There is scarcely an authority that he does not refer to or a view that he does not consider. The question we have before us not having been adjudicated, he expresses himself with his usual deference; but no one can read the eight hundred and first section of the second volume of his Commentaries and doubt that the great jurist was clearly of opinion that one could not be impeached except while in office. He says:

> As it is declared in one clause of the Constitution that "judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States," and in another clause that "the President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors," it would seem to follow that the Senate were bound on the conviction in all cases to enter a judgment of removal from office, though it has a discretion as to inflicting the punishment of disqualification. If, then, there must be a judgment of removal from office, it would seem to follow that the Constitution contemplated that the party was still in office at the time of the impeachment. If he was not, his offense was still liable to be tried and punished in the ordinary courts of justice.
>
> And it might be argued with some force that it would be a vain exercise of authority to try a delinquent for an impeachable offense when the most important object for which the remedy was given was no longer necessary or attainable. And although a judgment of disqualification might still be pronounced, the language of the Constitution may create some doubt whether it can be pronounced without being coupled with a removal from office. There is also much force in the remark that an impeachment is a proceeding purely of a political nature. It is not so much designed to punish an offender as to secure the state against gross official misdemeanors. It touches neither his person nor his property, but simply divests him of his political capacity.

My opinion is that the Senate has no jurisdiction to try William W. Belknap.

Opinion of Mr. Sherman,

Delivered May 15, 1876.

Mr. SHERMAN. The question of jurisdiction presented in this cause depends upon the following clauses of the Constitution:

First—

The House of Representatives * * * shall have the sole power of impeachment. (Article 1, section 2, paragraph 2.)

Second—

The Senate shall have the sole power to try all impeachments. (Article 1, section 3, paragraph 6.)

Third—

The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. (Article 2, section 4.)

Other clauses of the Constitution limit the degree of punishment to removal from and disqualification to hold and enjoy office under the United States, forbid pardons for impeachment, and reserve to the courts the power to try the party convicted by indictment, according to law.

The first two clauses confer, in as full and complete a manner as human language provides, upon the House the power of impeachment and upon the Senate the power to try impeachments.

These are the only clauses in the Constitution that confer jurisdiction in cases of impeachment. They are in the ordinary form in which powers are conferred upon the different departments of the Government, whether legislative, executive, or judicial.

Thus the Constitution declares that "the Congress shall have power to lay and collect taxes, duties, imposts, and excises." This is the general grant of power upon which our whole system of taxation rests. It is limited by other clauses of the Constitution as "that no tax or duty shall be laid on articles exported from any State," and that "all bills for raising revenue shall originate in the House of Representatives;" still we rest upon the general power already quoted for the great system of taxation which supports our Government and the public credit.

In the absence of other clauses no one could question the power of the House to impeach or the power of the Senate to try, and the only limitation upon these powers would be drawn from the legal meaning of the word "impeachment." The framers of the Constitution spoke in the legal language of the English law-books, well known to them. The words used in the Constitution carry all the legal incidents and meaning that these words convey according to the established law of the colonies and the mother country, from which we derive our institutions; and in construing them we must give them full force and effect, except so far as they are qualified by other clauses.

It is, therefore, necessary, before considering qualifying clauses, to ascertain the precise meaning of the word "impeachment," when that mode of accusation and trial could be resorted to under the English law, upon whom it could operate, and then limit or enlarge the meaning of the word by other provisions of the Constitution.

Without entering into a detailed statement of the English law of impeachment, I assume that the argument and cases cited clearly establish the following propositions:

First. That no one can be impeached except for official misconduct or misconduct of an officer. "The jurisdiction is to be exercised over offenses which are committed by public men in violation of their public trust and duties." (Story on the Constitution.)

The cases do not sustain the broad assertion by May in Parliament, that "all persons may be impeached for any crimes whatever," for the power was only exercised by Parliament to punish offenses by persons in official trust. It is designed as a method of national inquest into the conduct of public men.

Second. That the king alone is excepted from impeachment. The king cannot be impeached, though others who advise or aid him can be. Only by revolution can the king be removed from office. It was a revolution that deposed and executed Charles I and a revolution drove James II from his kingdom.

Third. Persons not in office may be impeached for official misconduct while in office. The cases cited in the argument conclusively show that such has been the unquestioned practice in Parliament.

The inquiry now is how far the Constitution of the United States qualifies or limits these general propositions of the English law of impeachment.

The fourth section of article 2, already quoted, changes the law of impeachment in several particulars. By clear implication it limits the power of impeachment to "the President, the Vice-President and all civil officers of the United States," and thus excludes all officers of the Army and Navy, who are to be tried by rules and articles of war authorized by the Constitution. The designation of "all *civil* officers of the United States" includes not only executive but judicial officers, and would only except from the law of impeachment officers of the Army and Navy.

As by the English law the king, the head of the executive authority of the English government, could not be impeached, it might be inferred that the President, the head of executive authority in this Government, could not be impeached without some other provision extending the limit of parliamentary impeachment. It is apparent from the debates in the convention that this question was the chief one in dispute, and that it was settled that the President ought to be subject to impeachment. Therefore the fourth section of article 2 provides expressly that the President and Vice-President shall be removed from office on impeachment, thus extending the power of impeachment to the chief executive officer, not subject to impeachment by the English law.

So far the meaning of this section is clear enough, as it expressly includes the President and Vice President among those who may be impeached, and by clear implication excludes officers of the Army and Navy from trial by impeachment; but it does not in express terms limit the power of impeachment to civil officers *while in office*. Is the general law of impeachment changed in this respect by this section? If it is, then the judgment of impeachment can be defeated by resignation, and impeachment itself becomes a mere mode of removing an obnoxious officer. Is the term "civil officer" descriptive of the person at the time the offense was committed or must it apply continuously to the time when he is impeached, tried, convicted, and sentenced? The defendant claims, in support of the latter proposition, that, as the judgment, in cases of conviction, must be "removal from office," this necessarily implies that he must be in office at the time of trial and judgment. To this it is replied that the jurisdiction of the Senate is amply conferred by previous clauses; that the fourth section does not limit impeachment to civil officers *while in office;* that it does not confer jurisdiction, but only makes removal mandatory when civil officers are convicted; that this is not inconsistent with the full power of impeachment conferred by other clauses, whether the "civil officer" was in or out of office when the trial took place. We must construe these clauses together, giving to each full effect as qualified by the others, remembering that no word is used in the Constitution that has not its carefully chosen office and meaning.

The designation "all civil officers" as the persons to be impeached has full effect in excluding a large class of the officers subject to impeachment under the parliamentary law. The object of their exclusion is obvious enough, as the power of Congress to make rules and articles of war furnished the means of punishing such officers in a much more summary and proper way than by impeachment. The primary object of impeachment, which the framers of the Constitution clearly intended to preserve, was to secure the punishment of great offenders for official misconduct. They had extended this process of trial and punishment to the President, the chief executive officer of the United States. They had provided not only for his removal, but for his perpetual exclusion from office. They were familiar with the English precedents which extended this process to all official offenders whether in office or out of office, but made no exception of civil officers who had resigned. They knew the abuses of this great power of impeachment and carefully limited the extent of the punishment. They knew the effect of party heat, and therefore required a vote of two-thirds of the Senate to convict. They knew that persons had been convicted upon insignificant charges, and therefore required the offenses charged to be high crimes and misdemeanors. The debates in the convention show that impeachment was regarded by the framers of the Constitution as a great safeguard to be maintained and preserved, and they conferred it in broad and general language and then sought by qualifications to prevent its abuses. It was not asserted, either in the Convention or in Parliament, that the power to punish by impeachment official misconduct by a person who had resigned his office was an abuse to be guarded against; that a private person could thus be wrongly oppressed or disfranchised. There is no appearance of injustice in the English precedents of impeachment after resignation. The danger of such injustice was not pointed out and no words were either proposed or adopted to confine impeachment to civil officers while in office. *All* civil officers may be impeached. The time when is not stated, whether before or after resignation, nor was it material by the law of impeachment. The material thing was that the offense must be by a civil officer; that it must be a high crime or misdemeanor, and, upon conviction, that he *shall* be removed and may be forever disabled from holding an office of honor, trust, or profit under the United States. I therefore must hold that the term "civil officer" is used to designate the character of the office held by the accused when the offense was committed, and not to require that he hold the office either at the time of his impeachment or at the time of the trial. The use of this term was not to repeal the established parliamentary law, that the offender should not escape impeachment by resignation, but only to exclude from impeachment officers of the Army and Navy, who could be tried by the Rules and Articles of War upon principles of military honor more exacting than those of civil law. Upon the most careful examination I must conclude that the resignation of the defendant does not affect the jurisdiction of the Senate to try this impeachment. We are neither to assert jurisdiction without clear authority given by the Constitution nor to evade it or surrender it when by our deliberate judgment it is conferred.

The construction I have given to the words "civil officers" in the Constitution is supported by the plain and obvious intent of the word "officers" used in the statutes of the United States punishing the crime of bribery. The Revised Statutes embody the general law against bribery in the language used in all the statutes on that subject. Section 5501 provides that—

Every officer of the United States and every person acting for or on behalf of the United States in any official capacity, under or by virtue of the authority of any

Department or officer of the Government thereof, * * * who asks, accepts, or receives any money * * * shall be punished. * * *

Section 5502 provides—

Every member, officer, or person convicted under the provisions of the two preceding sections, who holds any office of profit or trust, shall forfeit his office or place, and shall thereafter be forever disqualified from holding any office of honor, trust, or profit under the United States.

Section 5500 provides for cases of bribery of members of Congress.

The law thus provides for the indictment and punishment of members of Congress, officers of the United States, and persons other than officers who hold positions under the Government, that, upon conviction, any such person described as a member, officer, or employé, shall be imprisoned and forfeit his office or place, and be forever disqualified from holding any office of honor, trust, or profit under the United States. Can it be possible that the resignation of an officer before his indictment under this law can defeat his indictment because he was not an "officer" when indicted or because the judgment of removal from office could not operate in his case? Such a strict construction would hardly be applied by a court to even a criminal law. And yet this is the same construction that would limit the jurisdiction of the Senate to the impeachment of "officers" in office not only when the offense was committed but also continuously through impeachment, trial, and punishment. So strict a construction of the Constitution would cripple all its great powers and leave it a helpless wreck against treason and corruption.

With no desire to enlarge the powers of the Senate I cannot so limit the power of the House to impeach or the power of the Senate to try impeachments.

In considering this question I have not overlooked the danger that may arise in high party times when a reckless majority may by abusing the power of impeachment seek to exclude from high office the most worthy private citizen for old offenses committed when in office. This argument applies as well to all the great and necessary powers of the Government—the power to declare war; to make treaties; to pardon crimes; even the judicial powers may be abused; but still all these powers are essential to the existence of Government. The power of impeachment has been carefully limited by the Constitution in the same mode as other powers that may be abused—as to the power of the Senate to make treaties or the power of either House to expel a member, each of which can only be exercised when two-thirds of the body concur. Other safe-guards have been thrown around the power of impeachment: the nature of the offense is defined, the officers to be affected are described, and the punishment is limited. These safeguards only indicate that if it had been the purpose to further limit impeachment to civil officers *while in office* it would have been clearly expressed. The precedents of impeachment of persons not in office for offenses committed while in office were well known, and if this had been considered an abuse to be guarded against it would have been done in the same clear manner that the Constitution guards against excessive punishment in cases of impeachment. It is even now in this debate a well-balanced question whether, if we were making a new Constitution, and not construing one, it is not more dangerous to the public to allow an officer to escape impeachment by resigning than it is dangerous to the private citizen to leave him subject to impeachment for alleged high crimes or misdemeanors when in office. Argument drawn from the possibility of the abuse of power can have but little weight in the construction of a written Constitution of express powers; and in this cause such arguments have been greatly exaggerated. Nearly a century has passed away and the plainly expressed power to impeach all civil officers has been rarely exercised. It is not likely that the power to impeach persons not in office, for official misconduct when in office, will often be invoked, and only in extreme cases and when the offender flees from justice by resignation. It may then be the only means of arraignment, exposure, and punishment. The public safety may depend upon its exercise. It has been often said that if this remedy exists it must exist until the grave covers the offender; that there can be no statute of limitations against it. If this be true, it is equally true of civil claims or judgments in favor of the United States. But the limitation of civil suits, judgments, taxes, and duties, as well as of all remedies, is a part of the law-making power. Congress may by law limit the time within which all processes or remedies, whether in the Departments, the judicial courts, or in this high court of impeachment, may be presented. There is no remedy that cannot be limited by a statute of repose. Although the House of Representatives has the sole power of impeachment and the Senate can alone try an impeachment, yet Congress has the power to make all laws which may be necessary and proper for carrying into execution all the powers vested by the Constitution in the Government of the United States or in any department or office thereof.

Under this power statutes of limitation are passed which deprive a citizen of his property without "due process of law," but only by the lapse of time. All rights must be enforced by appropriate remedies within a reasonable time, to be fixed by law, or they are forfeited. The power and jurisdiction of all courts are subject to a qualified limitation by statutes which the courts are bound to respect and enforce, and I see no reason why this principle does not apply as well to the House of Representatives when an accuser and to the Senator when a court as to the ordinary tribunals of civil and criminal justice. If so, this danger of perpetual accusation against a civil officer by impeachment may be guarded against and regulated by law as in ordinary cases of crime or misdemeanor.

But, in the view I have taken of this case, I do not rest upon a comparison of the danger that may flow from asserting or refusing jurisdiction; nor am I at liberty to decide it by the Constitution as I think it ought to be, but only by the Constitution as it is; and upon this basis my conviction is clear that the jurisdiction of the Senate to try this case was not affected by the resignation of the defendant.

Opinion of Mr. Sargent,

Delivered May 15, 1876.

Mr. SARGENT. In the few words that I shall say I propose to give rather my conclusions than the processes of reasoning by which I have arrived at them. I think the jurisdiction of the Senate exists in this case because—

First. The Constitution plainly provides that in cases of high crimes and misdemeanors in office the House shall have the power to impeach and the Senate the power to try offenders.

Second. The jurisdiction inures at the very moment the crimes are committed, whether the House impeaches or not; and the power to impeach and try *then* exists and continues until completely exercised.

Third. The Constitution fixes no limitation of time during which the power of impeachment may be exercised and at which it shall terminate; and, unless such limitation is affirmatively stated in that instrument or necessarily implied, it cannot be assumed.

Fourth. So far from the Constitution implying any limitation of time, the provision denying pardon to persons removed or disqualified implies the reverse; for no lapse of time, penitence of the criminal, or subsequent exemplary life is potent to secure for him rehabilitation. The reason of the rule is as potent to subject the offender to a trial which will result in disqualification, obviously deemed important to the public safety by the authors of the Constitution.

Fifth. It is assuming a limitation of time at which the power of impeachment shall terminate to hold that the resignation of his office by a high criminal or the expiration of his term defeats the power and ousts the jurisdiction of impeachment.

Sixth. The object of impeachment is the protection of the Government and people, and this object is secured by providing two consequences to follow conviction, namely, removal from office and future disqualification, the latter in the discretion of the Senate.

Seventh. The power to sentence to disqualification to hold office was granted because its exercise may be as necessary to the public safety as removal from office; and it would be difficult to conceive a case where a person would be found guilty of crimes that would, in the judgment of the Senate, be cause for his removal, where the Senate would fail to further sentence him to disqualification.

Eighth. A sentence to disqualification is a humiliating badge affixed to high crimes and misdemeanors in office, and operates for the public safety not only by the exclusion of the criminal from office but as a warning and example to all public officers, tending to purity in office.

Ninth. The power is as much conferred by the Constitution to sentence to disqualification as to removal. If the jurisdiction to impeach inures at the very moment the crimes are committed, it must continue until acquittal or until the power of the court is exhausted, including the power to sentence to disqualification, unless the Senate shall omit disqualification, in its discretion, from its judgment.

Tenth. Congress may have power to enact a statute of limitations on impeachments, recognizing for that purpose the principles on which such statutes are upheld, that they are statutes of repose, going to the remedy and not to the right; but it has not done so.

Eleventh. The words "civil officers" used in the Constitution, designating persons liable to impeachment, were intended to establish a distinction between those who have assumed civil office in the General Government and military and naval officers, as also those of the people never in office, who might be held liable to impeachment without careful exclusion.

Twelfth. The body of the people was excluded from the process of impeachment by apt language because the practice in the English Parliament had given some color to the idea that any subject might be impeached. But the President and Vice-President were included in the number liable to impeachment because that practice had excluded the king from such process.

Thirteenth. The cumbrous machinery of impeachment is not likely to be set in motion for light causes or be unjustly used by an incoming party as a mode of assault on their retiring adversaries. The good sense and rectitude of the people would rebuke such use of this tribunal. Congress has provided other means for the trial of minor offenders, to which they are properly remitted, and the Senate will judge for itself what are high crimes and misdemeanors. But, if this abuse is an inseparable incident to this process, the remedy is in an amendment to the Constitution.

Fourteenth. The allegations of the articles of impeachment, taken

as confessed for the purpose of this plea to the jurisdiction, are that the late Secretary of War was guilty of high crimes and misdemeanors in that office. In my view, his resignation does not oust our jurisdiction to try this impeachment, and, if he is found guilty, to sentence him to disqualification from office.

Opinion of Mr. Edmunds,

Delivered May 16 and 17, 1876.

Mr. EDMUNDS. Mr. President: The provisions of the Constitution on this subject, brought together in their order, are as follows:

The House of Representatives shall * * * have the sole power of impeachment. (Article I, section 2, last clause.)

The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside. And no person shall be convicted without the concurrence of two-thirds of the members present. (Article 1, section 3, sixth clause.)

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law. (Article I, section 3, seventh clause.)

The President shall * * * have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. (Article 2, section 2, first clause.)

The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. (Article 2, section 4.)

Looking to the language of the Constitution alone, and applying to it the ordinary rules of construction and common sense, I have no difficulty in holding that the right of the House of Representatives to impeach and of the Senate to try a person for high crimes committed in office, does not depend upon the circumstance of holding office at the moment of the impeachment, and, so, is not lost by the fact that the accused party had ceased to hold office before the proceedings began.

It seems to me demonstrable that the grants of the power of impeachment to the House and of the power to the Senate to try are, unless limited or restrained by the fourth section of article 2, complete and unlimited, otherwise than by the import and scope of the term "impeachment," as it was at that time defined and understood. The range of the judgment, which otherwise might have been even death, is limited, but the jurisdiction over the subject and the accused is not.

Leaving out of view, then, for the present, the fourth section of article 2, the question is, what is impeachment? I understand it to be, both in its legal and historical sense, the accusation and prosecution of a person for treason, or other crimes and misdemeanors, affecting the administration of public affairs. (Jacobs's Law Dictionary, title Impeachment; 4 Blackstone's Commentaries, 259; Comyn's Digest, title Parliament.)

It was not, so far as I know, even suspected at the time of framing our Constitution that by the existing definition or practice of impeachment the accused must possess the particular quality of being an office-holder at the time of accusation or trial. The import of the term was not then subject either to doubt or dispute. Its scope, at least as including all high official crimes, was also settled and well known. It had never been asserted, so far as I know, that it did not apply to ex-officials equally with those in office at the moment of presentation. It follows that, if the word was to have any definite meaning and scope in the Constitution, it must have been used in the sense in which before that time it had been known and used. (United States *vs.* Wilson, 7 Peters, page 150; McCool *vs.* Smith, 1 Black, page 459.)

To hold otherwise would be to cast doubt and uncertainty upon many other parts of the Constitution. The subjects of jury trial, pardon, habeas corpus, admiralty and maritime jurisdiction, attainder, piracy, and many others, are instances. The Constitution is not an instrument of definitions; it is an instrument of grants and declarations. The only definition in it is that of treason.

The words of the third section of article 1 are not only general as to description of the jurisdiction, but they refer to the accused as a person. They declare that—

When the President is tried, the Chief Justice shall preside; and no *person* shall be convicted without the concurrence of two-thirds of the members present.

The plain meaning of these words to my mind is, that the accused is to be tried in his personal character, and that when he happens to hold the office of President, and is on trial, the Chief Justice shall preside. It does not follow because the President may be impeached and tried while in office that he cannot be afterward.

It has been contended that the clause concerning the judgment in impeachment cases shows that the accused must be in office when impeached and when sentenced. This proposition cannot, I think, be maintained. The clause does not speak of jurisdiction, either in respect of the offense or the offender; but it merely regulates by limitation of extent, the consequences to follow from the exercise of a jurisdiction already granted. It declares simply that the judgment shall not extend further than two things—removal from office and disqualification. The range of the action of the tribunal, after it has found the offender and tried and convicted him, is circumscribed by boundaries. Within these boundaries it may do both or only one of the things allowed, or still less than the extent of either, as by censure or suspension; but the fourth section, hereafter to be considered, requires one of them to be done, if the person convicted happens to be within the category described at the time of judgment.

The two things, removal and disqualification, are not inseparable and to be taken *in solido*. We are not to go *further* than both. The clause is negative, and a prohibition against doing more than two things cannot be turned into a command to do both or neither. In the negative form of the clause the use of the conjunction *and* was indispensable. Had *or* been used, we should have been prevented from applying more than one of the remedies in any case. Hence it follows that no inference can be raised from these words that the person impeached must be an officer at the time of impeachment. I should myself, indeed, have no hesitation in holding that a person out of office could be impeached for a high crime committed in it if the language of the Constitution had been affirmative, like this: "All civil officers of the United States shall be liable to impeachment for treason," &c. In all such cases the jurisdiction attaches on the commission of the offense, and it attaches to the offense and the person committing it. No difficulty arises from the use of the word *office* or *officer*. An office is a function, and an officer is a person performing it. When, therefore, the law provides for dealing with an officer who misconducts himself, all rights and responsibilities are fixed at the moment of the act, and his ceasing to hold office is not of any consequence except as making one part of the judgment unnecessary. It is the individual who has committed the offense while holding a particular relation to a public trust, and it is the individual and not the relation that is to be brought to trial and dealt with for it. The circumstance that one of the duties of the tribunal will be to remove him if it finds him still holding on to a place he has dishonored must not be confounded with the amenability to prosecution, trial, and judgment in his personal character. It is in that character indeed that he is removed from office, which is merely the separation of the individual from the performance of the trust he has betrayed.

There are numerous instances of laws framed on the obvious principle and distinction before stated, under which it is not known that it was ever hinted that the jurisdiction failed because the party had left office, and so a part of the sentence would be unnecessary. The following are a few of them:

By 5 and 6 Edward VI, chapter 16, it is provided that any persons holding office selling appointments under them "shall not only lose and forfeit" their "office," but "shall be adjudged a disabled person to have, occupy, or enjoy the said office."

By 8 George I, chapter 24, section 8, it is enacted that if any "officer of any of His Majesty's ships or vessels of war" shall receive on board merchandise for purposes of trade, every such "officer" shall, upon being convicted thereof by a court-martial, "lose and forfeit his command and office, and shall be forever afterward incapable to hold office, and forfeit all wages due to him."

By Section 5408 Revised Statutes, it is declared that "every officer having the custody of any record," &c., who shall "destroy it, &c., shall pay a fine, and shall moreover forfeit his office and be forever disqualified," &c.

By Section 5444 Revised Statutes, it is provided that every "officer" of the revenue who admits dutiable goods without duty "shall be removed from office and fined," &c.

A case under martial law illustrates these views. The Constitution provides that every person shall be entitled to trial by jury, &c., "except in cases arising in the land and naval forces," or "in the militia when in actual service."

In the war of 1812 the President called for certain regiments of New York militia to enter actual service. One Martin, enrolled in the militia, refused to respond, and remained at home. After the war was over and the militia discharged, he was brought before a court-martial for the offense of refusing to serve. He was tried, condemned, and sentenced to pay a fine. He brought an action against the officer who collected the fine, and the case came to the Supreme Court. That court decided unanimously that, he having committed the offense while he belonged to the militia and when it had been called into actual service, the jurisdiction of the court-martial attached then, and did not depend upon the activity with which it should have been exercised, or the haste with which it should proceed, but that he was amenable to its jurisdiction after the war was over and the militia had been disbanded. (Martin *vs.* Mott, 12 Wheaton, 28.)

It may well be considered that the matter of removal of the person from office on impeachment is one of necessity or usefulness rather than of jurisdiction to try. The question does not arise until after conviction, and then if the person is not in office the judgment is not necessary, although perfectly regular if pronounced. In the latter case the act required has been performed in advance of the judgment, which could not make the judgment either irregular or erroneous, however vain it might be if it were the only judgment to be pronounced. It would seem to be a waste of time to refer to the instances that illustrate this.

It has been claimed in the argument on one side that, if the respondent was in office at the date of the commencement of proceedings, the jurisdiction then existing could not be defeated even if the Senate would have had no jurisdiction had he vacated the office before. I am unable to perceive the force of such a distinction. Jurisdiction is of two kinds only: first, of the subject-matter so-called in the books, that is, the offense, which in this case it is charged was the taking of

bribes while the respondent was in office. This jurisdiction must exist, if it exist at all, at the time the offense was committed, and it cannot under any circumstances be created afterward. So existing, it cannot be lost in any other way than by an abrogation of the law upon which it is founded or by the abolition of the tribunal upon which the jurisdiction is conferred; neither the lapse of time nor the change of circumstances of the offender has any effect upon it whatever. If he has received a pardon or has been before acquitted or convicted of the same offense, or if the statute of limitations has run, the jurisdiction over the subject remains precisely what it was before, and these things are matters of defense, showing, not that the tribunal has no right to try, but that, having the power to try, it is upon such circumstances bound to pronounce judgment in favor of the respondent. But this elementary principle must be so obvious that I will not enlarge upon it.

The other branch of jurisdiction is what is called jurisdiction of the person. It always relates to the individual who is to be brought under the judgment of the tribunal. No matter how many places of trust he may hold or by how many titles he may be described, it is the man in his personal, and not his official, character who is to be confronted with the accusation and with the accuser. Even when the object of the prosecution is not punishment, but to compel the performance of an official act, the judgment of the court always is against the person, commanding him to exercise the office and duty the law has imposed upon him. This being the complete nature of jurisdiction, (and it was never, so far as I know, questioned,) the jurisdiction over the subject-matter of the offense described in the articles, if it ever existed, cannot have been lost by the change of circumstances of the respondent; or, if by possibility it could be lost by such change of circumstances, it must equally be lost when the change occurs after proceedings begun, as well as before. The proceedings themselves cannot create jurisdiction over the subject; they are only in exercise of the jurisdiction residing in the tribunal. But the jurisdiction over the person is first obtained by such exercise in the process of bringing him before the tribunal. And as the jurisdiction over the subject may be lost by abolishing the law creating the offense or abolishing the tribunal authorized to try it, so the jurisdiction over the person may be lost by his ceasing to exist, and in no other way. And at whatever stage in the proceedings this last event happens, the result is the same, subject in some cases, possibly, to the doctrine of relation.

I am, then, clearly of opinion that, viewing the provisions of the Constitution under the appropriate heads of the power of the House of Representatives and the Senate in respect of impeachments, the accused is subject to the jurisdiction of this tribunal, notwithstanding he may have been out office when the impeachment was begun.

But it is suggested that the second article of the Constitution, which relates to the executive power, contains in its fourth section a provision that raises the presumption that jurisdiction to prosecute and try an offender by impeachment is to be confined to cases in which the accused person persists, in spite of his detected crimes and in spite of the danger to the public service, in remaining in office until he is prosecuted, and (as I think it necessarily follows) until he is tried and convicted; for, as I have said, it seems impossible to hold that, if it be the person in his character of an officer who is impeached and that he is in his character of an officer only to be convicted and adjudged, the jurisdiction exists any longer than the official relation does. This section is in the following words:

> The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

It will be seen that it does not profess to confer any power, but it imposes a duty to be performed in a certain event. It is not placed in that article of the Constitution which alone grants all the other powers conferred either upon the Senate or House of Representatives, but under the appropriate head of executive powers and liabilities. It provides for the immediate dismissal of offenders in that Department when convicted on impeachment. Obviously that is all there is of it upon its face. Everything else that is to be got out of it must be through the medium of speculative dialectics. Had it been placed in the first article with the provisions upon the subject of impeachment and in the same order in which it now stands, it seems perfectly plain to me that not a cavil even could have been raised upon it in favor of the claim of the respondent. The provisions then would have stood:

First. The House of Representatives "shall have the sole power of impeachment."

Second. "The Senate shall have the sole power to try all impeachments."

Third. "Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law." And "the President, Vice-President and all civil officers, shall be removed" on conviction, &c. So brought together, can the keenest criticism find any ground for claiming that this last clause was intended to impair any power granted in the prior ones, or that the circumstance of holding office at the moment of impeachment was to be made a test of the right to impeach or try anybody?

The fourth section does not declare who may or who may not be impeached, but that the President, Vice-President, and all civil officers shall be removed on impeachment for and conviction of treason, &c. It does not hint at jurisdiction, but, on the other hand, it in terms declares what shall follow the exercise of a jurisdiction by conviction of a person holding office. In every other instance in the Constitution where power, authority, or jurisdiction is conferred, entirely different language is employed, clear and affirmative in its character: as in the passages before referred to, and in all grants of power to Congress or either of its Houses, in all grants of power to the Executive, and in the grant of judicial power; and it is amazing that if the framers of the Constitution had intended this section to be one of jurisdiction, and determinable at the will of the offender at that, it should have been left in its present form for policy and conjecture to discover it. It will be observed, too, that it makes no provision at all for disqualification; and if it be the jurisdictional provision, it completely measures the judgment as well as describes the offender and the offense, and it would be difficult to disqualify at all, as removal alone is mentioned; for, as the prior disqualifying clause is in the negative, that could not be resorted to to enlarge the jurisdiction under this section.

But it appears to me that, if this section could be treated as one of descriptive jurisdiction and made like the other jurisdiction clauses of the Constitution, to read affirmatively and specifically, that the House of Representatives shall have power to impeach and the Senate to try the President, Vice-President, and all civil officers of the United States, and on conviction to remove and disqualify, it would still be clear that retirement from office would not affect the question; for, as has already been shown, if the power granted be to impeach and try the President, &c., for misconduct in office, it is a power to prosecute and try the person who while holding the office committed the offense, without regard to his character at the time the hand of the law is laid upon him. There is no conflict between this section and the provisions of article 1, nor is this a limitation upon them. On the contrary, it is an addition that in respect to persons holding office at the time of conviction, the judgment of removal, that otherwise would have been discretionary and might have been suspension for a limited time or censure, shall be pronounced. And in view of the negative form of the judgment clause in the first article, it might have been open to doubt in the convention whether the President and Vice-President whose terms of office were fixed at four years could be removed without an express provision.

From these considerations confined to the words of the Constitution, I am of the opinion that in order to give effect to all its provisions on the subject, and to carry out the intent of the instrument expressly stated, to provide not only for removal, but (in many instances more important still) for excluding from office citizens who should betray their official trusts, it must be held our jurisdiction is not defeated by the retirement of the offender from office. If, as is claimed, (but which I do not by any means admit,) the Constitution is to be construed in respect of its jurisdictions like a penal statute, the jurisdiction is, I think, still clear. The definition of the terms used was perfectly understood and the expressions employed must in every part be given their fair effect.

I will now proceed to the considerations bearing upon the question, extrinsic to the words of the Constitution, and in the light of which they may, I think, be justly viewed. The state of a subject at the time, the condition of the laws and practice, the mischief to be provided against, and the adequacy of the remedies to be applied, are all just subjects of consideration in seeking for the true construction of a constitution or a statute.

Under this head I refer—

First. To the state of the English law of impeachment at the time the Constitution was framed and adopted. By that law, from which American impeachment was taken, it was settled and universally known that an ex-official could be prosecuted by impeachment and tried for crimes committed in the office he had vacated. And this provision of the English law, instead of ever having been regarded or complained of as an abuse, was considered an essential security of the people, uncriticised by anybody. The case of Warren Hastings then proceeding, was an eminent instance of a prosecution of this character, notorious in every country where the English language was spoken or where English history was known. The chief and necessary object in such a prosecution was the security of the state against the possibility of the return to office of one who had flagrantly betrayed his trust. But in England a pardon granted after conviction and judgment on impeachment operated as any other case of pardon—to relieve the offender from all the effects of the judgment, and to restore to him his full political capacity. The case of Lord Chancellor Bacon was a well-known instance of this character. To guard against the abuse of this power of pardon, the framers of our Constitution carefully provided that there should be no pardon in any case of impeachment. The offender convicted and disqualified by the judgment of the ordinary courts of law could escape the consequences of his crime through the pardon of the executive, and by his favor be again put in charge of the public trust he had abused; but if disqualified by impeachment, the possibility of executive sympathy and favor was put entirely out of reach. It will be seen, too, on a careful consideration, that this exclusion of the power of pardon really has effect only in respect of disqualification, if granted after sentence, for I think it

clear that without this exclusion a pardon after sentence of removal actually executed could not restore the offender to his office. Such an act would be nothing less than an executive appointment. But if in a case like the present, the guilty person can avoid all jurisdiction of impeachment by resignation, he is enabled to do for himself the very thing that Constitution says the executive shall not do for him,—that is, relieve himself from any possible disqualification again at the earliest moment, to lay hold of the administration of affairs with a fresh appetite for corruption. Was it not, then, the object of the framers of the Constitution to retain the remedy of impeachment in its full vigor, and to prevent, in the cases supposed, its being frustrated by any action of the Executive and much more by any action of the wicked official?

Second. The state of the law in the States at the time our Constitution was adopted.

Nine of the thirteen already had distinct provisions in their constitutions upon the subject, regarded, evidently, not as instruments of oppression or of danger to private rights, but as essential securities of public liberty and purity of administration.

That of Delaware (September 20, 1776) provided that—

The president, when he is out of office and within eighteen months after, and all others offending against the State, either by maladministration, corruption, or other means by which the safety of the Commonwealth may be endangered, within eighteen months after the offense committed, shall be impeachable by the house of Assembly before the legislative council. * * * If found guilty, he or they shall be either forever disabled to hold any office under the government, or removed from office *pro tempore*, or subjected to such pains and penalties as the law shall direct. And all officers shall be removed on conviction of misbehavior at common law, or on impeachment, or upon the address of the General Assembly. (Article 23, page 213.)

That of Massachusetts (March 2, 1780) provided that—

The senate shall be a court, with full authority to hear and determine all impeachments made by the house of representatives against any officer or officers of the Commonwealth for misconduct or maladministration in their offices.

* * * * * * *

Their judgment, however, shall not extend further than to removal from office, and disqualification to hold or enjoy any place of honor, trust, or profit under this Commonwealth; but the party so convicted shall be, nevertheless, liable to indictment, trial, judgment, and punishment, according to the laws of the land. (Chapter 1, section 2, article 8.)

That of New York (April 20, 1777) was as follows:

* * * * * * *

A court shall be instituted for the trial of impeachments. (Article 32.)

That the power of impeaching all officers of the State for mal and corrupt conduct in their respective offices be vested in the representatives of the people in assembly.

* * * * * * *

No judgment of the said court shall be valid unless it be assented to by two-third parts of the members then present; nor shall it extend further than to removal from office, and disqualification to hold and enjoy any place of honor, trust, or profit under this State. But the party so convicted shall be, nevertheless, liable and subject to indictment, trial, judgment, and punishment, according to the laws of the land. (Article 33.)

That of New Jersey (July 2, 1776) had this provision:

* * * * * * * *

Provided always, that the said officers severally shall be capable of being re-appointed at the end of the terms severally before limited; and that any of the said officers shall be liable to be dismissed, when adjudged guilty of misbehavior, by the council on an impeachment of the assembly. (Article 12.)

It will be noticed that this is the only instance in which mere removal from office was the object to be attained.

That of Pennsylvania (July 15, 1776) declared:

* * * * * * *

Every officer of State, whether judicial or executive, shall be liable to be impeached by the General Assembly, either when in office or after his resignation, or removal for maladministration. (Article 22.)

That of Virginia (July 5, 1776) provided that:

* * * * * * *

The governor when he is out of office, and others offending against the State, either by maladministration, corruption, or other means by which the safety of the State may be endangered, shall be impeachable by the house of delegates.

* * * * * * *

If found guilty, he or they shall be either forever disabled to hold any office under government, or be removed from such office *pro tempore*, or subjected to such pains or penalties as the law shall direct. (Pages 267, 288, American Constitutions.)

That of North Carolina (December 18, 1776) declared that:

The governor and other officers offending against the State by violating any part of this constitution, maladministration or corruption, may be prosecuted on impeachment of the General Assembly or presentment of the grand jury of any court of supreme jurisdiction in this State. (Article 23.)

Governor and other officials offending. (Article 23.)

In this it will be observed that if the ex-official on the grounds insisted upon in this case could not be impeached, he could not be prosecuted in court; for the powers to impeach and to prosecute criminally were stated in exactly the same terms.

That of South Carolina (March 19, 1778) provided:

* * * * * * *

That the power of impeaching all officers of the State for mal and corrupt conduct in their respective offices, not amenable to any other jurisdiction, be vested in the house of representatives. (Article 23.)

It will be seen that these constitutions, which must have been familiar to the members of the Federal convention, and which certain literal coincidences in respect of some of them show were actually in their hands, covered every aspect of the question, some, as Delaware and Virginia, withholding the power to impeach the chief magistrate until he should be out of office, and conferring it without distinction as to all others. One—New Jersey—providing this remedy only as a means of removal from office. Some, as Massachusetts and South Carolina, were formed in substance and almost literally like penal statutes, such as I have referred to, against official misconduct, and providing for disqualification as well as removal. Others, as New York, providing a tribunal with general power to try impeachments, and describing affirmatively the power of impeachment as against officers. One—Pennsylvania—providing for the impeachment of an officer "either when in office or after his resignation," using, as it will be seen, the same words of description for the person in office and out of it. Another, as North Carolina, describing the offender as an officer, and providing for his prosecution like the ordinary description of a penal statute.

With all these constitutions before them, and with the knowledge of the settled import and scope of the proceeding, and under the English law, it seems impossible to believe that the members of the Federal convention should not have in affirmative terms declared that no one should be impeached or convicted unless in office at the the time, if they had so intended, when at the same time they studiously set a boundary to the judgment, and put away the possibility of executive interference; and in a case, too, in which, if the claim of the respondent be correct, neither the boundary to the judgment nor the exclusion of a pardon would be of the least consequence without the practical assent of the accused. To reach such a result by force of a supposed implication arising out of the fourth section of the executive article of the Constitution would be most extraordinary. If, as I do not perceive, ingenuity can raise such an implication, the principle of law declared by the Supreme Court in the case Faw *vs.* Marsteller, 2 Cranch, page 10, would prevent its having the effect claimed. It is there said by Chief Justice Marshall, stating the opinion of the court:

In searching for the literal construction of an act it would seem to be generally true that positive and explicit provisions, comprehending in terms a whole class of cases, are not to be restrained by applying to those cases an implication drawn from subsequent ones, unless that implication be very clear, necessary, and irresistible.

A cardinal rule in construing all laws, penal as well as others, is that of common sense, and to make an implication extracted from one part of a statute or constitution absolutely nullify an express and wholesome grant of power in another would not, as it seems to me, comport with this rule. I can find nothing either in the words of the Constitution, English law, history, State constitutions, (excepting New Jersey,) existing at the time, the debates in the Federal or State conventions, or in the cases that have arisen, that raises the inference that liability of officers of the United States to impeachment was intended or understood to be affected by their retirement from office after committing a crime. But each and all these sources of information lead me to the opposite conclusion. Some passages in debates and arguments have been referred to, but an examination of them all with the context convinces me that in these passages the idea expressed was that only the misconduct of the person in a national as distinguished from a State office was the subject of impeachment, and that if one holding an office should be convicted he must be removed. Instances in these debates, particularly in State conventions, are too numerous to be cited at large. The following are a few of them that speak in unmistakable language:

In the Pennsylvania convention Mr. Wilson, himself a member of the Federal convention, speaking of the impeachment of Senators (which it then seemed to be understood could be done) and of the supposed improbability of their convicting themselves, said:

But this will not be always the case. When a member of the Senate shall behave criminally, the criminality will not expire with his office. The Senators may be called to account after they shall be changed and the body to which they belonged shall have been altered. (2 Elliot's Debates, page 477.)

Mr. Madison, in the Virginia convention, and also a chief member of the Federal convention, and *primus inter pares* in both, speaking of the impeachment of the President, said:

He is responsible in person. If he shall seduce a part of the Senate to a participation in his crimes, those who are not seduced would pronounce sentence against him; and there is this supplementary security, that he may be convicted and punished afterward, when other members come into the Senate, one-third being excluded every two years. (3 Elliot's Debates, page 516.)

In the South Carolina convention General Pinckney, also a member of the Federal convention, speaking of the impeachment of Senators, said:

Though the Senate are to be judges on impeachments, and the members of it would not probably condemn a measure they had agreed to confirm, yet as they were not a permanent body, they might be tried hereafter by the Senators and condemned, if they deserved it. (4 Elliot's Debates, page 265.)

In another place, referring to the argument that the power of great men might overthrow the Government, he said:

An appropriate body, immediately taken from the people and returnable to the people every second year, are to impeach those who behave amiss or betray their public trusts; another body, taken from the State Legislatures, are to try them. No man, however great, is exempt from impeachment and trial (4 Elliot's Debates, page 281.)

In Blount's case the respondent was expelled after impeachment, and the plea alleged that he was not ever a civil officer and that he was not a Senator at the time he pleaded. The action of the Senate was first to negative by 14 to 11 a resolution declaring that he "*was* a civil officer of the United States within the meaning of the Constitution and therefore liable to be impeached;" second, to adopt, by the same vote of the same Senators, a resolution that his plea was sufficient.

I think the inference is fair, taking the two votes together, that the point made in the plea that he was then out of office was not regarded as having any value. The negative of the first resolution, declaring in the past tense that he was a civil officer, was equivalent to declaring that he was not such at the time of his offense, and so the same fourteen Senators declared as a consequence that the plea was good. A careful examination of the whole course of the argument in that case on both sides clearly convinces me that neither the managers nor the counsel supposed that a person holding a civil office and committing a high crime in the course of its administration could escape impeachment by laying down his commission.

It is indeed evident that in the case of offending officials the remedy in courts of law by punishment may often entirely fail; first, when the criminal has the honest sympathy of the executive, whose unlawful orders he may have been executing in committing the offense. In such a case he would receive pardon; second, when, from a belief in his innocence or out of pity for his supposed misfortunes, the prosecuting officers themselves, under the orders of the executive, would be directed not to proceed against him; third, when from corrupt motives the same orders would be given; fourth, when, from party bias or in supposed resistance of it, the same policy of inaction would be adopted. In all such cases the official offender would go "unwhipt of justice" if by his own will he could defeat impeachment by resignation; and impeachment as a practical remedy for security against great official crimes would cease to exist.

We have been pressed with the dangers liable to arise from upholding the jurisdiction. If it be admitted that this is a proper element in the question it must be considered from both points of view. On the one hand, it is asserted that it subjects all the people of the United States who have held office to the power of impeachment without limit of time, and that in the changes of party it may become an instrument of persecution. But this presupposes that a majority of the elected Representatives of the people will have become corrupt and that two-thirds of the Senators will also corruptly and through perjury lend themselves to such schemes. When such a state of society is reached, the power of impeachment will be among the least of evils. On the other hand, if the jurisdiction in such cases as the present does not exist, the great remedy (for it is a remedy rather than a punishment) of impeachment, carefully preserved in the constitutions of all the States, will be shorn of all its value for the protection of the people, as declared in the Constitution, against the return to office of great offenders and against their pardon by a corrupt or misguided Executive. In weighing these suggested dangers on either side, can we hesitate in our choice? In every aspect of the case that has been presented to my mind I cannot doubt that the jurisdiction of the Senate is complete.

Opinion of Mr. Maxey,

Delivered May 17, 1876.

Mr. MAXEY. William W. Belknap stands charged before the Senate sitting as a court of impeachment, by articles presented and exhibited by the House of Representatives, with being guilty of high crimes and misdemeanors committed in office while Secretary of War, and is specifically charged in said articles with corruptly and unlawfully taking and receiving money while Secretary of War, paid to him with a view to influence his official action as such Secretary, and that he was so influenced in consideration thereof.

The respondent pleads to the jurisdiction of this court, and says that before and at the time when the House of Representatives ordered and directed that he should be impeached at the bar of the Senate and at the time when said articles of impeachment were presented and exhibited against him, he was not, nor has he since been, nor is he now an officer of the United States, but at said times, is now, and ever since has been a private citizen of the United States and of the State of Iowa.

Without analyzing the pleadings, it is sufficient to say that the real question before the court is, Has the Senate, sitting as a court of impeachment, the constitutional jurisdiction to hear and decide this case? Here is a grave question of constitutional law we are called on to determine.

The House of Representatives * * * shall have the sole power of impeachment. (Part of clause 5, section 2, article 1, Constitution.)

The Senate shall have the sole power to try all impeachments. (Part of clause 6, section 3, article 1, Constitution.)

The articles of impeachment were presented by the House. If the House of Representatives had the constitutional power of impeachment in the case at bar, the Senate undoubtedly has the sole power to try the impeachment; so that the question presents itself: Was the power of the House of Representatives constitutionally exercised in the case at bar?

The Constitution does not in terms define impeachment. Whatever meaning the word had at the adoption of the Constitution it has now.

To ascertain this meaning we must ascertain what was understood and acted on as its meaning by the States which framed and ratified the Constitution and by the bodies in England—House of Lords and House of Commons—possessing the sole power to try and the sole power to impeach; for from Great Britain we derived not only our ideas of the common law but our ideas of parliamentary procedure, our systems of practice and pleadings, our maxims and the meaning of technical words and phrases; and the meaning of impeachment, as understood by the framers of the Constitution as derived from our British ancestors at the adoption of the Constitution, it has to-day, subject only to the limitations and restrictions of the Constitution. The procedure is substantially the same as in the British Parliament. The judgment is restricted.

Our Constitution, as I construe it, wisely subjects the person guilty of an impeachable crime or misdemeanor committted while in office, not only to impeachment for the official crime or misdemeanor committed while thus in office, but likewise to indictment, trial, judgment, and punishment according to law for the same crime or misdemeanor, the same as any other criminal person. The processes are essentially different, the forums different, and the objects to be accomplished different. The person may be tried, convicted, and judgment rendered against him by the court of impeachment for his official crimes, and yet he may not be indicted, tried, sentenced, and punished in the ordinary course of law; or he may be tried, convicted, sentenced, and punished in the ordinary course of law, while for his official crimes he may not be impeached. The two trials have no necessary connection. Each, however, is a trial, when had, for a criminal offense: The one for a grave official crime or misdemeanor committed in office; the other for an offense against the ordinary criminal laws of the land. The one is an extraordinary trial before a court specially organized under the Constitution for the very purpose of investigating the official crimes and misdemeanors of which the accused may stand charged by articles of impeachment, and of deciding without appeal that very case. When this court of impeachment has performed its functions in that case, it is dissolved and ceases longer to be a court. But the same person may, under the Constitution and by its special provisions, notwithstanding trial, conviction, and judgment against him by the court of impeachment, be tried, convicted, sentenced, and punished by a court of competent criminal jurisdiction organized, not for this particular case, but for the trial of all offenders within its jurisdiction, and it continues to be such court after the trial the same as before. An investigation of the nature of the judgment pronounced by the court of impeachment will aid in the elucidation and solution of the question of jurisdiction before the court.

It has been strenuously argued that the judgment of the court of impeachment, even to the full of the constitutional limit, inflicts no punishment in the sense and meaning of the Constitution. If this be correct, it logically follows that the trial before the court of impeachment is not a criminal trial; for it would be vain to speak of a court having criminal jurisdiction shorn of the power to punish. The law never says or does a vain or useless thing or a foolish thing.

I think this is a grave error.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law. (Article 1, section 3, clause 7, Constitution.)

We are not left in doubt as to the meaning of the word "conviction," and the common acceptation and the legal definition are substantially the same.

Webster defines "conviction:"

The act of convicting; the act of proving, finding, or adjudging guilty of an offense.

Bouvier defines "conviction:"

That legal proceeding of record which ascertains the guilt of the party, and upon which the sentence or judgment is founded.

Webster defines "judgment" thus:

Judgment is the sentence of the law, pronounced by a court or a judge thereof, upon a matter in issue in any cause before it; judicial determination; decision of a court.

Bouvier defines "judgment" thus:

The decision or sentence of the law, given by a court of justice or other competent tribunal, as the result of proceedings instituted for the redress of an injury.

Now, we have in the clause of the Constitution last quoted the word "judgment" in respect to impeachment, and the word "convicted," "party convicted" in the same connection, and we have the definition of conviction as that legalproceeding of record which ascertains the guilt of the party, and upon which the sentence or judgment is founded; so that these apt and appropriate words with well-defined meaning in criminal law are found in the seventh clause of section 3, article 1, of the Constitution, limiting the extent of the judgment or sentence on conviction in cases of impeachment, namely, that it shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States. It is a limitation on the judgment, and in no sense touches the jurisdiction of the court. The highest punishment to which the court can go in its judgment is fixed by the Constitution. All under this, of the same nature as that fixed, is within the discretion of the court. It is entirely discretionary with the court what shall be the judgment, provided it is of the nature of that set out in the Constitution; and provided it does not go further than the limit fixed by the Constitution, always making removal part of the judgment if the party on trial holds a civil office under the United States.

But I am not confined to the words "conviction" and "judgment" in support of the position which I have advanced, namely, that this is a trial for a criminal offense, an official crime, by a constitutional court with special criminal jurisdiction, namely, the Senate sitting as a court of impeachment, authorized by the Constitution to hear and pronounce judgment upon conviction.

In further support of this view I quote the following clause of the Constitution:

The President * * * shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. (Part of clause 1, section 2, article 2, Constitution.)

In this connection I make the following extract from a decision of the Supreme Court of the United States defining "pardon;" namely:

Pardon is an act of grace proceeding from the power intrusted with the execution of the laws which exempts the individual from the punishment which the law inflicts for a crime he has committed, (7 Peters, page 150, the passage quoted on page 160.

The position that judgment in cases of impeachment inflicts no punishment is conclusively overthrown by the passage which I have just quoted from United States rs. Wilson, in which the opinion was delivered by Chief Justice Marshall.

Analyze the clause of the Constitution last quoted in the light of the above opinion of the Supreme Court, and by substituting for "pardon" its meaning as defined by Chief Justice Marshall, speaking for the court, and we have:

The President shall have power to grant reprieves and exempt an individual from the punishment which the law inflicts for the crime he has committed, except that in cases of impeachment he shall not have the power to exempt an individual from the punishment which the law inflicts for the crime he has committed.

So that we have the apt and appropriate words of the criminal law, "judgment" or "sentence," "conviction," "pardon," "punishment," "crime," "punishment," which the law "inflicts," &c., for "crime," all used in respect to impeachment.

The conclusion to my mind is irresistible that this must be held a trial for a criminal offense—an official crime; that this court is a court of special criminal jurisdiction, with the power to inflict punishment upon conviction and judgment, the extreme penalty or limit of the judgment consequent upon conviction being fixed by the Constitution, beyond which the court cannot go.

If this be correct, and if there be nothing in the Constitution to the contrary, and there is not, then the jurisdiction of this court to hear, try, acquit, or convict, and pronounce judgment of acquittal or conviction according to the facts, attached instantly upon the alleged commission of the crimes and misdemeanors imputed to the defendant in the articles of impeachment.

The question of guilt or innocence has nothing whatever to do with the question of jurisdiction. If the House of Representatives had the power to impeach upon the facts averred in the articles, this court has jurisdiction to try. And this jurisdiction attaches in this court according to the facts averred in the articles of impeachment, precisely as jurisdiction attaches instantly to a court of criminal jurisdiction according to the facts averred in the indictment. Jurisdiction in both cases may lie dormant for want of discovery; but, for all that, it exists, and the beginning of proceedings is simply setting in action a pre-existing jurisdiction. The jurisdiction of an ordinary criminal court may also lie dormant for want of indictment, precisely as the jurisdiction of this court may lie dormant for want of articles of impeachment; nevertheless jurisdiction in each case vests upon the commission of the offense. Jurisdiction once attached cannot be divested by the act of the party inculpated so long as he may live. The position of Mr. Rawle, that impeachment will lie against a person "who is or has been" an officer of the United States, for a high crime or misdemeanor committed while in office, is, in my judgment, correct and consonant with the great purposes sought to be accomplished by this grant of power in the Constitution.

In the Virginia convention called to consider the Constitution of the United States, Mr. Madison, while discussing the treaty-making power, referring to the President, said:

* * * If he should seduce a part of the Senate to a participation in his crimes, those who were not seduced would pronounce sentence against him; and there is this supplementary security, that he may be convicted and punished afterward, when other members come into the Senate, one-third being excluded every second year; so that there is a twofold security—the security of impeachment and conviction by those Senators that may be innocent, should no more than one-third be engaged with the President in the plot; and should there be more of them engaged in it, he may be tried and convicted by the succeeding Senators, and the upright Senators who were in the Senate before.—*Elliott's Debates on the Federal Constitution*, second edition, volume 3, page 516.

It follows for the reasons given, if they be sound, that the plea to the jurisdiction should be overruled.

Second:

Each House may determine the rules of its proceedings. (Part of clause 2, section 5, article 1, Constitution.)

The House of Representatives, under this warrant of the Constitution, and in order to facilitate and expedite business, has subdivided itself into many committees, and among others a Committee on Expenditures in the War Department. This committee, as appears by the defendant's pleas, had this matter under investigation while he was Secretary of War, with the defendant before them in person; had examined a witness, and were proceeding to investigate the matters charged against the defendant. It is true the defendant in the same plea says that said committee had no authority from the House of Representatives to investigate the charges against him, but I apprehend this does not change the fact, nor the ratification of the action of the committee by the House, nor the constitutional power of the committee derived through the House. In my judgment the proceedings begun, had their origin constitutionally, before that committee.

Resolutions ordering articles of impeachment was another step, and still another was taken by presenting and exhibiting articles of impeachment against the defendant at the bar of the Senate. If, then, the more circumscribed view is taken (to which I do not give my assent) that jurisdiction attached by the beginning of proceedings, it attached when the investigation began before the committee, (of which defendant had notice and appeared,) culminating in articles of impeachment; and jurisdiction, having vested, could not be divested by the act of the defendant, and therefore the plea to the jurisdiction should be overruled.

Third. I think it entirely immaterial whether the party against whom articles of impeachment may be presented is in office or not at the time they are found and exhibited.

The essential point is, Was he an officer of the United States at the time the imputed crimes and misdemeanors set forth in the articles are therein charged to have been committed by him as such officer? If yea, the jurisdiction of the court of impeachment instantly attached and became vested by reason of the alleged commission of the high crimes and misdemeanors in office, precisely as the jurisdiction of the criminal court instantly attached and became vested by the alleged commission of the crimes and misdemeanors against the law of the land, considering him the same as any other criminal person. Both jurisdictions spring out of the same acts. There is no reason why one jurisdiction should attach before the other; nor is there any more reason why one jurisdiction should be divested by the act of the party more than the other. The admission of such doctrine renders the Constitution in this regard a dead letter. Now we know that the inculpated party cannot divest the jurisdiction of the ordinary court of criminal jurisdiction by his own act, neither can he divest the court of impeachment of jurisdiction of his official crimes by his own act.

The Blount case, (2 Annals of Congress,) to which reference has so frequently been made, settles nothing in respect to this point. It simply determines, and properly, that a Senator is not a civil officer of the United States, and therefore not impeachable, and this doubtless because his title and commission come from a State, and not from the United States. This exposition, in my judgment, is consonant with right and reason. Not only so; it is the recognized doctrine in England, to which we must look in the absence of a definition of impeachment in the Constitution, and of authoritative precedents in our own country.

The Constitution refers to impeachment without defining it. It assumes its existence, and silently points to English precedents for knowledge of detail. (Professor Dwight in sixth American Law Register, page 257.)

Among the numerous English precedents which might be cited the cases of Warren Hastings and Viscount Melville are in point. Both had resigned their offices; Melville while the subject-matter of his delinquencies was under discussion, Hastings before proceedings had begun. Hastings's trial was pending and had drawn to it unusual attention and interest in Europe and America at the very time the constitutional convention was in session. The debates in the convention on the question of the removability and disqualification by impeachment of the President throw much light on this subject. The question there was not whether the Executive should be impeachable, but whether he should be impeachable while in office. It seems not to have been doubted that he could be impeached after his term expired. We must conclude that the framers of the Constitution had the English precedents before them and had full knowledge that in England the power of impeachment not only existed but was acted on of impeaching persons after they had gone out of office as well as while in office for crimes and misdemeanors committed in office. The conclusion is irresistible that they accepted the word impeachment with its well-understood and recognized meaning, limiting only the power of the court in its judgment to removal and disqualification and commanding removal on conviction where the impeached party was a civil officer of the United States. The power of impeachment being restricted in the matter of judgment, and not otherwise, according to all recognized rules of construction, no other restriction, modification, or qualification was designed or made.

The trial by impeachment was, in my judgment, designed by the Constitution to be a trial for official crime. The punishment is apt and appropriate to official crime: removal from office and perpetual disqualification. Removal from office relatively to perpetual disqualification is a trifling matter. It is done almost every day, sometimes with, sometimes without, cause, and does not have perceptible influence on the politicial or social standing of the officer removed where trial is not had; but the man under sentence of perpetual disqualification to hold any office of honor, trust, or profit under the United States is as completely ostracised from his fellows as the Man in the Iron Mask was isolated in his lonely cell. The felon may be pardoned; the man disqualified by the judgment of the court of impeachment never. We know not what is the unpardonable sin which excludes its perpetrator from all hope of entering the portals of heaven, but this we do know, that a man who stands convicted of high crimes and misdemeanors committed while in office, and is sent-

enced by the court of impeachment to perpetual disqualification, is held by public opinion to be a living, moving infamy, a moral leper, shunned by his fellow-man and without hope of pardon this side the grave.

And this supreme punishment is, in my judgment, inflicted not only to get rid of a bad man in office, not only to prevent that man ever being restored to office, but chiefly, by fearful example, to teach all men that American institutions and the perpetuation of free government, of the people, by the people, and for the people, demand purity in office. It says to all the world, in fearful language, that he who obtains office, however exalted be his social and political station, and who betrays his sacred trust by the commission of official crime, and upon fair trial is found guilty and sentenced by this court to perpetual disqualification, unlike the ordinary felon, is beyond pardon, because he has betrayed, to the hurt of all the people, a great trust. It teaches all men that the public offices of the land, to which the humblest citizen may aspire, are forever closed against him, because he has been weighed in the balance and found wanting. The Constitution intrusts this fearful power to no ordinary tribunal. The character of this august court gives emphasis to the positions I have presented. Two embassadors from every State in this Federal Union of co-equal States make up this august court, and it is not reasonable and in consonance with human action that they will close the gates forever to political preferment against an American citizen unless they can and ought in truth and conscience to pronounce this weighty judgment.

I have not discussed section 4, article 2, of the Constitution, to wit:

> The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

This section, in my judgment, does not touch the question of jurisdiction, nor the power of the court as to its judgment, save as hereinafter stated. The jurisdiction is ample and unrestricted by a former clause:

> The Senate shall have the sole power to try all impeachments.

The number of the court necessary to convict is also set out in a former clause:

> And no person shall be convicted without the concurrence of two-thirds of the members present.

The nature and extent of the judgment is previously set out.

> Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

The fact that a party convicted by the court of impeachment cannot plead this conviction in bar to a prosecution by indictment is also set out.

> But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law.

If the fourth section of the second article be regarded as jurisdictional, then the judgment of the court under that section is shorn of its principal strength, to wit, disqualification from ever after holding office. This is unreasonable, and conflicts with the universal doctrine of construction, that all parts of a law must be construed to stand according to their plain import, if not manifestly contradictory, which is not the case here.

The fourth section of the second article, in my judgment, means that if the party impeached be a civil officer of the United States, he shall, upon conviction, be removed from office. Construed with the other parts of the Constitution, the whole together means this: We have granted to the Senate the sole power to try all impeachments. We have furthermore directed that judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States. We now command that if the party convicted be a civil officer of the United States, by your judgment he shall be removed from office. Whether you shall go further in your judgment, and add disqualification, is within your discretion. Whether you convict or not, is to be determined on your consciences according to the facts; but should you convict, you shall remove. This, in my judgment, harmonizes and gives force to every part of the Constitution bearing on impeachment.

It will be noted that in respect to impeachment the sixth clause of section 3, article 1, of the Constitution uses the word "person," not "officer." The seventh clause of the same section uses the word "party," not "officer;" while the fourth section, second article, uses the word "officer." This is not accidental. The greater word "person," "party," in the third section, first article, embraces the lesser word "officer," in the fourth section, second article; so that every part of the Constitution on impeachment can, without the slightest strained construction, be given its full force. And it is also to be observed that there is not a word in the debates of the convention which framed the Constitution indicating an intention to limit or in any manner restrict the broad power previously granted in clause 6, section 3, article 1, nor is there anything in the debates to show a desire or intention to abridge the power of impeachment as exercised in the British Parliament, except in the judgment. The judgment was restricted, not the parties against whom judgment might be rendered. Unless the converse appears, we must conclude that the framers of the Constitution took the word impeachment as they found it, and placed just such restrictions on it, and no more, as they deemed wise. And these I have endeavored to show affect the judgment and not the jurisdiction.

My judgment from every stand-point from which I have earnestly and laboriously examined this grave and most important question, is that the Senate, sitting as a court of impeachment, has jurisdiction to try the case at bar, and therefore that the plea to the jurisdiction should be overruled.

Opinion of Mr. Wright,

Delivered May 17, 1876.

Mr. WRIGHT. To the articles of impeachment preferred against him by the House of Representatives, the defendant, William W. Belknap, pleads, among other things, that at the time said articles were exhibited he was not, nor has he since been, nor is he now (at the time of plea pleaded) an officer of the United States. To this the managers on the part of the House of Representatives interpose, in substance, a demurrer, to the effect that, if a civil officer of the United States at the time of the *commission of the offense* charged, it matters not that he had laid down such trust before said articles were exhibited.

It appears from the pleadings and record that, though said defendant was Secretary of War prior to the 2d day of March 1876, and at the time of the commission of the alleged offenses, he at *ten o'clock and twenty minutes* of the forenoon of that day tendered his resignation of said office and that the same was then and there accepted by the President of the United States; that the House of Representatives on that day, (to wit, March 2 1876,) *after* the hour above named resolved to present articles of impeachment against said defendant; that the Senate was notified thereof on the 3d of March by the proper committee of the House; and that the articles were exhibited in proper form and at length on the 4th day of April 1876.

The question of jurisdiction thus raised has been discussed with distinguished and exhaustive ability, and meets us at the very threshold of the investigation. It is one of the utmost gravity, whether viewed as one affecting the rights of one charged or the public service, and especially so since it involves the construction of several most important provisions of the Federal Constitution which are now, at the close of one hundred years of our national history, for the first time presented for authoritative determination by the American Senate.

The question is this: Defendant being a civil officer *at the time of the commission of the offenses charged*, is he liable to impeachment under articles exhibited against him *after he had resigned said office*, said resignation having been accepted by the proper executive officer?

Before reaching the main question, however, two or three unimportant ones are perhaps worthy of notice. I dispose of these very briefly.

First. The acceptance of the resignation was in no manner necessary to its validity or completeness. As a rule, and save where a statute otherwise provides, *any civil* officer may, at his own will and pleasure, lay down any public trust; and, that he may be relieved from further official responsibility and care, it is not necessary that he shall have or obtain the consent of any other official or person thereto. There is no law which forbids the Secretary of War or any other civil officer under the United States, resigning his office, and this resignation, when duly tendered and offered in fact, therefore, as completely and absolutely disrobed the defendant officially before as after its formal acceptance by the Executive. The Executive had no discretion, for he had no power to compel the defendant to remain in office. The law may require the assent of another, or others, to get *into* office in this country, but, fortunately for the officer, and perhaps for the service, too, he does not need such assent to get *out*.

Second. Does the *motive* influencing the resignation in the least affect the question? In other words, suppose the defendant resigned, avowedly, openly, and undeniably, for the purpose of avoiding impeachment, and for no other purpose, could this in any manner be considered in determining our jurisdiction? I answer, most certainly not. The resignation was a *legal* act and must have, upon every principle known, so far as I am aware, to every system of jurisprudence, its *legal* effect. The motive influencing is of no more consequence than the color of defendant's hair or his opinion of the impeaching committee or the members of the Senate. Of course, if the resignation was not actual but colorable or simulated, a different question would be presented. But in this case, admitting it to be real or actual, the *motive* is attempted to be brought in question as of value. With it, I repeat, we have nothing to do.

Third. Had the defendant resigned at the time the House of Representatives took action? It is said he had not, for the reason that, as the House resolved on impeachment *on the same day*, though at a *later hour* than the act of resignation, such resolution took effect, by relation, to the first moment of that day, and therefore was prior, in actual or legal time, to the resignation.

I do not stop to inquire whether defendant was actually and in a legal sense impeached, or rather whether a due presentment was made prior to the 4th day of April last, (the day when the articles

were finally exhibited,) in the sense and for the purpose now under consideration. For, conceding that he was in law impeached on the 2d day of March, but as matter of fact at an hour *after* the resignation I am still very clear that the resignation was prior in legal time, and that therefore defendant was not an officer at the time of impeachment. If there are no portions of a day as to the *impeachment* neither are there as to the *resignation*, and if one, therefore, goes back to the first moment of the 2d of March, so must the other. And if defendant, therefore, had resigned on that day *after* the articles were resolved upon, he could claim, in my judgment, with as much propriety as the managers now do, that, as that act went back by relation to the first moment of that day, he was out of office before the House took action. And if, by possibility, in that state of the case, his counsel had so claimed, it is at least probable that such claim would have been resisted as stoutly and ably by the managers as they now insist upon this rule for the people. But I repeat, if it is true in one case or as to one act, it is equally so as to the other, and nothing is gained. It is not true as to either, however, for in our criminal jurisprudence, in a matter so vitally affecting the rights of one charged with the highest offenses, neither the law, justice, nor common reason will allow a technical, barren rule—a rule, too, only to be invoked in furtherance of justice—to give the lie to what is true in fact, or to make that true in law which is false in fact.

I shall assume therefore that the defendant was actually out of office at the time he was impeached, as much so and as completely as if he had resigned or his term of office had expired days or months before, and I shall treat the alleged motive of resignation as of no possible account, and upon these assumptions inquire whether he was still amenable to this constitutional punishment.

Other Senators have, and others doubtless will, discuss the history of the constitutional provisions involved, as also the authorities or precedents bearing upon the same. Because of this, as also because that whole field was exhaustively gleaned by counsel, but more because in my judgment, in view of conflicting opinions and the comparatively little attention heretofore given to the real question here involved, the merest ray of light has on prior occasions been thrown upon it—I say because of these things I shall content myself with stating my conclusion from the provisions of the Constitution itself. I do not think, however, that the authorities help us much, if any, and that it must be treated as a question to be now for the first time authoritatively settled by the American Senate. I may remark, however, in passing, that I by no means believe that the little decided conflicts with the conclusion I reach.

The *consequences* of the one construction or the other of these constitutional provisions, let me also say, I regard as having legitimately but little weight. The light or aid drawn from the deprecated or to be desired consequences of this construction or that of a statute or constitution is, at best, in most cases of the least value, and indeed not infrequently misleads or ends in error. Then, too, in this case it were difficult to tell in which path we shall find most dangers or in which greater safety. For if only those can be impeached who are in office at the time the articles are exhibited, then it is said the consequences would be most disastrous to the public welfare and the situation most anomalous; because the most hardened and corrupt official could by resignation, even after the Senate *had adjudged his guilt and before sentence*, cheat the law and go unwhipt of justice.

And the Senator from New Jersey, with a heart that ever beats responsive to the highest moral impulses, feeling and seeing the great wrong which would follow the rule that resignation *after* trial and immediately preceding sentence could defeat jurisdiction, has attempted to find a middle ground. But I submit just here that there is no middle ground. He cannot find rest for his feet upon any such theory. Indeed his argument rests, he will allow me to say, more in theory than in logic. If only those in office can be impeached, because removal is declared in all cases to be a part of the penalty, then the logic is inexorable and not to be avoided that they must be so *at the time the sentence is pronounced*. You cannot decapitate a headless trunk, whether the head was off a moment or a year before you came to the execution.

But returning from this digression, I remark that to the argument drawn from such consequences it is answered, grant the premises, yet one liable to impeachment may be indicted and tried in the judicial courts, and that if he escapes the sentence of the impeachment triers and courts, he must still confront the greater and more inexorable judgment of a great people, who, while they judge in mercy, love that which is politically just; and that neither resignations nor forms nor pleas nor judgments of Senates can control or mislead this grandest of inquests. On the other hand, if those once in office and now out can be impeached, if this is the meaning of the Constitution, then in alarm it is said only the grave can bar such prosecutions; and, too, that at each turn of the political wheel in this Government, where elections are frequent and the people's will not the most stable, those displaced may be at the mercy of an exultant and bitterly malignant triumphant majority. To this it is answered, that guilt can only be found by the action of both Houses, the Senate only being allowed to so declare by a two-thirds vote; and that it is not to be presumed that a power so great and so tremendous will be invoked except in cases clearly and justly calling it into exercise. And thus I might at much greater length state the arguments based upon the supposed consequences of adopting this view or that of the Constitution, and their claimed complete refutation; but I dismiss them all; for if the Constitution speaks, and I am to assist in its execution, then with consequences I have nothing to do, no care. As a member of this court, knowing that I must for myself declare the law, I may happily, in the discharge of that duty, leave consequences to take care of themselves.

What, then, is in the law or the Constitution?

> The House of Representatives shall have the sole power of impeachment.

This is found in the second section of the first article in its proper and appropriate connection. These words are few, but their meaning is certainly neither obscure nor doubtful. It *gives* to the House the power to impeach and *excludes* every other body, for it says the *House* "shall have the *sole power*." Nothing is left for interpretation, as to nothing in the sentence need we resort to books or law for explanation but the last word, "impeachment," and which was very fully explained and defined yesterday by the Senator from Vermont, [Mr. EDMUNDS,] and to it I shall not, therefore, refer more at length. By this clause, then, we have declared the grand inquest which alone can present or exhibit articles of impeachment against those liable to its penalties under our Constitution.

This as clearly confers the power as it would be possible for any words or language to do, and I confess to not a little surprise that any one should say that it does not confer power. If the power to impeach is not conferred here, it is not at all. Why it says that the House shall have the *power* of impeachment, the *sole power*. When the Constitution says that Congress shall have the *power* "to lay and collect taxes," is there no power conferred? When it says Congress shall have *power* to "borrow money," does it confer the power named? When it says it shall have *power* to "coin money," do you want more to show that it has power to do this thing? When it says it shall have *power* to "establish post-offices and post-roads," have we ever doubted that power over these subjects was thereby conferred? When it says that the House shall "elect its own Speaker and other officers," has any one ever denied that this conferred the power to make these selections? And when it says the House shall have the power, the "sole power of impeachment," do we need any more unequivocal and clear or emphatic language to show where this power is lodged or the right and duty to exercise it? Why if the language used in this case does not confer the power claimed, then I repeat it is not found at all, nor has Congress power to do anything *whatever upon any subject*, for in precisely the same language is all power conferred upon it as a legislative body. No, Mr. President, it will not do to say that this does not confer the very power claimed; and I repeat, as I shall I hope hereafter show, that this provision is the very source of the power invoked in cases of impeachment, and that without it we are driven to rely upon the merest implication.

Having, then, the supreme grand jury, or the proper inquest; having found who alone may impeach, we next inquire who is to *try* these offenses. This is answered in section 3 of the same article, where it is declared that—

> The *Senate* shall have the *sole power to try all impeachments.*

And thus we see that the *power* to exhibit articles is *given* to but *one* body, and that of trying is in precisely the same terms limited to the Senate. The machinery of impeachment can only thus be set on foot, and when jurisdiction is invoked but one body can exercise it. In other words, we have but one jurisdiction with sole *power* to present, and the one court having sole and exclusive jurisdiction to hear and determine.

And now, having the agencies prescribed or the power given, rather by enumeration than by definition, we may remark, (and this is true of almost the entire Constitution,) we naturally inquire for *what* may the House impeach and who is liable to the process; and when we have answered these inquiries we have at the same time answered who and what the Senate may try; for I assume that the Senate may and (perhaps) must try such persons and for those matters which the House may constitutionally present.

The first inquiry, for *what* offenses may this jurisdiction be invoked or for *what* may the proper persons or officers be prosecuted by impeachment, is not very material, I grant, to the matter now before us, since there is no point made, thus far at least, that the matters charged in the articles exhibited are not impeachable under the Constitution.

We have, then, the only proper body setting on foot this impeachment; this appropriate power has made in due form its complaint to the proper court and for or of a matter for which the defendant is amenable to the penalties provided by the Constitution, unless by his resignation that liability no longer continues.

Then who are liable? I answer, clearly not the private citizen. By this I mean that not every citizen of the land may be impeached. The tie of allegiance which holds or binds the citizen to the Government and to his duties is to be kept in full force and by all proper constitutional and legal means in this country as in England. But this rule, as I regard, of at least the earlier days of the common law, that all citizens or every subject might by impeachment be held to these obligations and punished for their violation, is not the rule of this country. Even in the States where we speak of the common law obtaining, we do not mean all of it, but only such parts as are not changed by statute, and such also as are consistent with the spirit and genius of our institutions and the habits and manners of our peo-

ple. This prerogative, or power, or right to impeach the private citizen because of infidelity to his obligations to the Government, or for any crime or misdemeanor, never was contemplated by our Constitution as continuing or obtaining, and is no part of the common law of this country or of impeachment. For it was no part of the well-settled parliamentary or common law when the Constitution was framed, and this its framers knew; nor did they ever intend to go so far, as is plain from the Constitution itself and the whole frame-work of the Government.

If citizens, as such, for offenses committed while citizens, are not impeachable, then who are?

This question the Constitution, I admit, does not answer in words. We are left to deduce its meaning, in this respect, largely from its implications and more especially and almost conclusively from the law as it stood before or at the time of its adoption, rather than from any *positive* command. It does not say that civil officers shall only be impeached *while in office*. It does not say they shall be liable while in office and for a limited period after they shall either voluntarily lay down their trust or after their terms expire, as in some of the States. Nor does it say in words that they shall be subject to these great prosecutions after they cease to be officers. All we find is this: In the third section of the first article (from which I have already quoted and which I here set out in full the better to see the connection of the entire language) we have this:

> The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.
>
> Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

All the provisions thus far quoted, it will be observed, are found in the first article of the Constitution, which provides for the law-making power and defines or prescribes its powers and duties. In the next article, relating to the Executive, and in its second section, we find that he is given "power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment;" and section 4 of the same article declares that—

> The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

And thus we have all the constitutional provisions which, as far as I can see, bear upon the question as to *who* is liable to impeachment.

It will be observed that the provisions of the Constitution assumed rather than declared that any one should be liable to impeachment. For the Constitution does not say that the President and other civil officers shall be liable to impeachment for the offenses named, but rather assuming such liability, and seeing that the power to impeach had already been given, it says that when they are impeached and convicted of these offenses they shall be removed. It assumes the conclusion, in other words, that they may be impeached, and applies or declares certain consequences which are to follow. I deny that this section confers any *power* to impeach, much less that it is the *only* part of the Constitution conferring this power. I have already deduced this power from other and unambiguous provisions of the instrument. If there was nothing else than this section, I think it would be exceedingly difficult to find power to impeach, for we would be without a tribunal with power to present or power to hear. If this was the sole source of power, the danger of exercising from mere *implication* a prerogative so high, and fraught with consequences so great, would be urged upon us with much propriety, and I must say not a little force. And it is passing strange to me that any one should depict the great danger in extending the implications of the Constitution, the necessity of looking for an express grant before exercising a power, and still rest the exercise of this high prerogative upon a section which assumes but does not grant it.

But it is argued that as removal must be and is declared by the Constitution a part of the penalty following the trial and conviction *in all cases*—that as this is logically as well as practically impossible of enforcement in one out of office, therefore only those who continue in office to the time of their presentment, if not of sentence, are liable to this proceeding. In my opinion the proposition as thus broadly stated, or indeed however stated, assumes too much, and loses sight of other and most material parts of the Constitution.

I do not believe that removal from office is necessarily a part of the punishment in all cases. It is in cases where it can be applied, and not otherwise. I grant, too, that if removal was the only penalty, or if the Constitution contemplated that in all cases it should be a part of the penalty, I should esteem there was but little room for argument in favor of the jurisdiction when the officer had resigned; for I do not agree with the proposition that inability to enforce the order of a court, as applied to such a question, is not to be accepted as a fair and proper test of jurisdiction. The Constitution no more than the law requires or exacts vain or foolish things, and to say that the Constitution expected or ordained that we should go through the farce of inquiring whether we ought to visit a punishment upon an offender which for any cause we no longer have the power to inflict would be illogical in the extreme, and, as I think, in the face of all rules of any value or weight in judicial proceedings.

But, as already stated, I do not believe that removal is necessarily a part of the punishment in all cases. In the first place, I think the connection in which this last provision in relation to removal is found is of no little significance as bearing upon this question. I find the grant of power to impeach in that portion of the Constitution which defines and limits legislative powers and duties. I find in the same place the power given and the tribunal named to try the impeachment. I find there, too, at least some rules of practice and a limitation of the punishment or of the consequences to follow conviction in such cases. Now, if having said this much it had stopped, it would scarcely be claimed that removal from office was *in all cases* to be *necessarily* a part of the penalty. Neither do I think would it have been insisted thus far that only those in office at the time of conviction were amenable to impeachment. For if I had found these or like provisions in a statute, I should never have thought, I confess, for a moment that liability depended upon the official status of the person *at the time of the trial*, but rather *at the time of the commission of the act* with which he was charged.

But it is said (and I may notice this point here as well as elsewhere) that if those out of office were liable to impeachment, why did not the Constitution say so? Ah, Mr. President, I think this may well be answered in *two* ways: First, those who had *gone out of office, all will admit*, were liable to impeachment for acts while in office *by the parliamentary law of England*. It was never held there that impeachment was confined to those in office at the time of their presentment. Now, is it not fair and legitimate to assume that the framers of the Constitution knew this, acted upon this assumption, and therefore intended that those who had gone out, as well as those in, were amenable to such prosecution? And if so, may I not, in the *second* place, inquire with the utmost consistency and with next to unanswerable force, that if the authors of the Constitution, *with this knowledge before them*, intended to include only those *in office*, why did they not say so? It was very easy if they intended it to say "while in office," or use some like apt words to express their meaning, and thereby *change the rule as it then obtained*, as all admit, in England and elsewhere.

But to return. The Constitution, in that part setting up the legislative or law-making branch of the Government, finished or concluded, as I have said, all that seemed to be necessary on the subject of prosecutions and trials of impeachment. Then it turned to the work of setting up the executive machinery, and said that he, the Executive, shall have certain powers, and, among others, to be "Commander-in-Chief * * * of the militia of the several States," but not until "called into the actual service of the United States;" to "require the opinion * * * of the principal officer in each of the Executive Departments," but not unless the subject thereof related "to the duties of their respective offices;" to "grant reprieves and pardons for offenses," * * * but not "in cases of impeachment;" and so as to other powers and their exceptions. But for the last exception, specially named, he could have pardoned or reprieved in impeachment cases as in the case of all other offenses against the United States. But that is in no sense a *limitation* or the semblance of a limitation, nor does it seem to indicate the least intention to limit or restrict the grant of power already given, in its appropriate place, over the matter of impeachment.

And the same reasoning applies to the main section relied upon in this connection. The second article, after prescribing the manner of electing the President and Vice-President, their tenure of office, what Congress might do by law in providing for cases of removal, disability, &c., of both, and that the person succeeding to the office of President under such law should hold until the disability should be removed or a President elected, and giving to the Executive the power to appoint judges, embassadors, &c., then, in its last section, (4, the one quoted,) apparently out of abundant caution, and to avoid the possible construction that these officers *must*, in virtue of what it had before declared, at all events and in any contingency hold for the terms named, it was declared that they and all civil officers *should be removed* from office on *impeachment and conviction* of the offenses named. But how does that limit the power to present and try impeachments before given or the persons to be impeached? This section, as before shown, contains no grant of power on this subject. It is as if all the other sections on the subject of impeachment and those governing the tenure of office of civil officers had been collated, and then at the close it had been said: "But all civil officers shall be removed from office when impeached and tried for treason," &c.

And it is not permitted to limit a grant clearly and expressly given over a general subject by a supposed limitation ingrafted, and only to be supported by the most blind and indefinite implication. There is a state of case, it will be seen at once, to which this section can apply in all its force and with the fullest meaning, without invoking its language to limit and restrain all the other sections and provisions quoted. If this is so, then it is my plain duty to so apply it and have all the provisions stand. I must not find conflict if I can by fair construction help it. That construction is always to be preferred and, indeed, adopted which will permit all the provisions of a statute, and especially a constitution, to be of force rather than that which will nullify any. I accept and treat this section (4, article 3) as a simple rule as to what shall be done in cases of impeachment and conviction of those *in* office and to remove any doubt as to their right to continue to exercise their trusts after their conviction. It does not at all impress me that it confines impeachment to those in office *at the time of their trial and conviction*. The language used in connection with the other sections is not different from that found in num-

berless statutes providing for the punishment of official misconduct and under which I never supposed, nor can I think any one ever did, that the official must continue in office in order to incur their penalties.

I am not unmindful that the Constitution (article 1, section 3) says that "where the President of the United States is tried, the Chief Justice shall preside;" and that from this it is argued that this officer can only be impeached when in office, for it is asked, If he is out of office shall the Chief Justice preside? I answer, certainly not. The reason of the provision is clear enough, not doubted by any one; and why shall we attempt to warp or extend its meaning for the purpose of limiting a necessary power, given for wise and necessary purposes by the Constitution?

Mr. President, the Constitution, held up by its four corners and considered as a whole, must receive at our hands a reasonable construction. We must not lose sight of the objects and purposes for which the powers therein given were conferred. As was said by Judge Story, that construction "should be adopted which is most consonant with the apparent objects and intent of the Constitution; that which will give efficacy and force as a government, rather than that which will impair its operations and reduce it to a state of imbecility; * * * the exposition should have a fair and just latitude, so as on the one hand to avoid obvious mischief and on the other hand to promote the public good." It is a charter of life, not of death, to the people, their government, and their interests. Purity in the discharge of official duty and the perpetual exclusion of bad men from all public trusts are quite as essential to this life of the nation as that some defiant little official shall be removed from a trust which he has disgraced.

Under this rule, I think, the construction stated is most clearly to be sustained. Because of this, and because I know, as we all do, as already stated, that neither in England nor elsewhere, prior to the adoption of the Constitution, was impeachment ever confined to those *in office* at the time of their *trial and conviction*, and because I must believe that the fathers employed the language of the Constitution with a full knowledge of this fact and of the meaning of the word impeachment as then understood and accepted, I rest my conclusion. I do so, also, because I think it in the face of the letter and in defiance of the spirit of all legislation, as applied to crimes or anything else, to say that any one can avoid liability or responsibility, which has already attached, by voluntarily laying down an office; and, too, because upon every principle, when an officer assumes a trust, he is as much liable after the expiration of the term as while in office to atone to the offended law for any violation of its criminal provisions as he is for the money he controlled or for those acts of commission or omission not involving criminal liability.

Mr. President, allow me to say in conclusion that I trust a pardonable State pride, and certainly a strong personal regard for the accused, inclined me to another conclusion. My first impressions, too, from a casual reading of the instrument, I confess, were against the power. But giving, as my time would allow, my best thought to the discussion and all the provisions of the Constitution, I have, with some reluctance, I admit—if reluctance should ever be indulged in the discharge of duty—been brought to conclude that we have jurisdiction in this case and shall by my vote so declare.

Opinion of Mr. Merrimon.

Delivered May 17, 1876.

Mr. MERRIMON. Mr. President, I will state briefly a summary of the grounds of my opinion upon the question now before the Senate. After so much has been said and much of it well said by Senators on both sides, more than this from me is unnecessary, especially as time has become so important for the consideration of other business.

The Constitution defines, limits, organizes, and embodies the powers which those who made it deemed necessary to the free operation, protection, and perpetuation of our system of national government. In interpreting its meaning, the purpose contemplated by it must be kept steadily in view. In that light and to that end, its leading provisions and several clauses must receive a fair, just, and reasonable construction. This leading rule ought always to prevail in ascertaining its meaning and giving effect to its several provisions.

Now, the Constitution provides as certainly the method of trial by impeachment as for a judiciary or the trial by jury. This method of trial is intended to answer a distinctive and important purpose, and that must be ascertained by applying the rule just stated in construing the several clauses providing for it.

It is provided in article 1, section 2—

> That the House of Representatives shall * * * have the sole power of impeachment.

By this clause the unqualified power to impeach is conferred upon the House of Representatives.

In section 3 of article 1 it is provided that—

> The Senate shall have the sole power to try all impeachments. * * * Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

These clauses confer upon the Senate the sole power and jurisdiction to try all impeachments, limiting only the power of judgment.

Here it is important to ascertain what is meant by impeachment. It is not defined in the Constitution, and we must necessarily look elsewhere to learn its meaning. It is a technical legal term, well understood in the English common and parliamentary law, and to that law, it is agreed by all, we must look for its meaning and use. According to that law, it implies a method of accusation of official crime by which the House of Commons in England preferred charges of crime against some person who, at the time of the commission of such crime, sustained some official relation to the government before the House of Lords. The House of Commons had the right and power to accuse any person who had been guilty of crime while in office under the government of such crime before the House of Lords, and the latter had the right and power to try and acquit or convict the accused and award judgment in its discretion. It was not necessary that the person so accused should be in office at the time of impeachment; but it was only necessary that such person should have been in office at the time of the perpetration of the crime in order to raise the jurisdiction of the court of impeachment. Perhaps, in ancient times, the House of Lords may have had, or exercised arbitrarily, a more extensive jurisdiction in matters of impeachment, but the English law was as I have stated it to be at and for a long while before the time of the formation of our Constitution.

This definition of impeachment being true, then the clauses of the Constitution just cited provide certainly that the House of Representatives, like the House of Commons in England, have the unqualified power to impeach—that is, to accuse—any person of crime perpetrated while such person held office under the United States before the Senate, and the Senate, like the House of Lords in England, have the power to hear, try, and acquit or convict such person so accused, and award judgment. But the power of judgment is limited; it "shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States." The power of judgment was not so limited in the House of Lords. And so, too, it is not material that the person so accused should be in office at the time of impeachment in order to raise the jurisdiction of the Senate to try, acquit or convict, and give judgment, unless there is some provision in the Constitution so providing; it is sufficient that he was in office at the time the alleged offense was committed.

There is nothing in the clauses of the Constitution already cited requiring that the persons impeached must have been in office at the time of impeachment; on the contrary, the limitation in the last clause upon the power of judgment goes to show that it was contemplated that the offending officer, though out of office by resignation or otherwise, might be impeached so that he might be disqualified to hold office afterward. It provides that—

> Judgment in cases of impeachment shall not extend further than to removal from office, *and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.*

To construe this clause as meaning that the guilty officer must have been in office at the time of impeachment is to render it practically nugatory, for he would always resign his office, and thus avoid impeachment. All rules of legal construction, as well as the reason of the thing, forbid such a construction.

The only other clause of the Constitution bearing on this subject is section 4 of article 2. It is in these words:

> The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

This clause does not confer jurisdiction, nor does it purport to do so. By the clauses which precede it and which appear in the proper place in the Constitution for that purpose, general jurisdiction is conferred.

If it shall be treated as defining and limiting the class of persons subject to the jurisdiction of the Senate as a court to try impeachment, then it must be so construed, if possible, as to harmonize with the clauses conferring jurisdiction. This may reasonably be done by giving it the effect that all officers in office at the time of impeachment shall be removed from office, leaving the disqualification to hold office to the discretion of the Senate.

If this provision were not in the Constitution, the Senate in cases of impeachment would not be obliged to give judgment of removal from office. It might give any judgment short of that, as of censure, or suspension from office, or the like. This clause by its express mandatory terms prevents this, and requires that any officer convicted for the offenses named *shall be removed from office.* It is mandatory. As to disqualification to hold office, that is left to the discretion of the Senate, as provided in the clauses giving jurisdiction. There is no word in the clause limiting the power to impeach to the time when such officer is in office, nor is there any such necessary or reasonable implication. Giving the words the plain meaning I have attributed to them, all the provisions of the Constitution cited harmonize, and a manifest general purpose is effectuated; that is, to protect the Government against faithless and corrupt officers and prevent the return of such men to office under the United States. This purpose is aided by another provision of the Constitution, which limits the pardoning power exercised by the President, so that it cannot reach cases of impeachment.

The manifest purpose and spirit of the Constitution is, through the court of impeachment, to protect the Government and people against high crimes and misdemeanors committed by the President, Vice-President, and all other civil officers and perhaps other officers, while in office, by not only removing such offending officers from office, but also by disqualifying them to hold office ever after. Now, if it shall be held that by resigning his office the guilty officer can evade impeachment, or that resignation operates to oust the jurisdiction of the court, then one part of the purpose, and in many cases that might arise, the most important part of the purpose, of the Constitution will be defeated; that is, to disqualify a great, corrupt, and powerful man, after he has because of crime resigned his office, to return to office again by means that he might in many ways employ. Can a construction which leads to such results, that thus defeats a distinctive and important purpose of the Constitution, be allowed? It seems to me that its terms, its phraseology, its manifest purpose and spirit all alike forbid it.

I am therefore of opinion that the plea of the accused to the jurisdiction of the court cannot be sustained; that it must be overruled, and the accused required to answer according to law.

Opinion of Mr. Howe,

Delivered May 19, 1876.

Mr. HOWE. Mr. President, the pending debate has developed two very different theories touching the remedy of impeachment as provided by the Constitution of the United States. Some Senators maintain that the Constitution adopts the remedy known to the parliamentary law of England, subject only to such limitations as are expressly prescribed by that instrument; while others hold that our Constitution borrowed nothing but the name of the remedy from English jurisprudence, and that it confers upon the two Houses of Congress no power in impeachment any more than in legislation not expressly granted. On one side it is argued that Congress may do by impeachment whatever the British Parliament may do, unless prohibited by some clause of our fundamental law. On the other hand, it is contended that Congress can do nothing by impeachment, or any other way, unless expressly authorized by the terms of that law.

In my own judgment the English remedy of impeachment never ought to have existed anywhere, and never was transplanted into this country. I therefore beg leave to submit briefly a view of that strange remedy known in the English law as impeachment.

The British constitution is of volcanic formation. In its successive chapters we see the upheaval of different political convulsions. Human necessity, not human choice, gave shape to the dreadful processes. Sometimes it was the necessities of a prince, sometimes the necessities of a class, sometimes the necessities of the people which dominated the movement. Parliamentary impeachment was the result of one of those convulsions. Impeachment originated in the necessities of a prince, and not in the necessities of the people. Mr. Hallam says the impeachment of Lord Latimer was the first which occurred under the English government. That was during the reign of Edward III. He was an able and not very scrupulous monarch. His ancestors for four reigns had been the vassals, not the sovereigns, of the English nobles. His great great grandfather was that King John from whom the barons of England wrested the great charter at Runnymede. His great grandfather was the third Henry, in whose reign the infamous Albemarle plundered prince and people indiscriminately, and Fawkes de Breauté, when the court had pronounced thirty-five judgments against him for the expulsion of so many freeholders from their possessions, armed his retainers, took the judge from the bench, and imprisoned him in Bedford Castle. His grandfather was Edward I, a prince of great activity and courage. But his authority was defied both by the clergy and the nobility. The archbishop of Canterbury told him he must not assess the church, because the Pope had forbid the clergy to pay taxes. The Earl of Hereford refused to go with his army into Flanders. The king exclaimed to him, "By God, sir earl, you shall either go or hang;" and the earl replied with equal spirit, "By God, sir king, I'll neither go nor hang." In the end, the king was obliged to apologize both to the clergy and the nobility. His father, Edward II, was dethroned and murdered. Admonished by so many examples of the dependence of the Crown upon the peerage, Edward III resolved upon its disenthrallment. He came to the throne when he was only thirteen years of age. He was subjected to a regency, composed of five clerical and seven lay peers. While he was yet an infant he saw the combined power of that regency crumble to dust under the iron heel of the aspiring and lawless Mortimer. When he was but seventeen he seized Mortimer and hung him. At eighteen he assumed the scepter, and laid it down only when he laid down his life forty-six years later, after one of the longest and most triumphant reigns in English annals.

To Edward III history accords whatever of honor is due to the invention of the great process of parliamentary impeachment. Fawkes de Breauté had shown how inadequate were the courts of law to curb the turbulence or check the rapacity of the nobles. The humiliation of his grandfather and the homicide of his father had proved the impotence of regal authority. Weary with the unequal contest between the prerogatives of the king and the power of the nobility, he ventured to unmask before the barons of England a power until then unfelt, but against which the startled peerage saw at once the sovereign authority of the Crown could alone protect them. It was in 1376, just five hundred years ago, when Edward III instructed the Commons of England to appear before the House of Lords, and in that sounding phrase which still thunders in the forms of impeachment to demand in the name of all the people of the realm judgment against Lord Latimer for high crimes and misdemeanors. No statute gave the new and strange remedy, defined its office, or prescribed its boundaries. No royal grant conceded it. It was not found in the great charter of King John, nor in either of the codicils thereto published by Henry III and the first Edward. As suddenly as the gift of diverse tongues fell upon the apostles upon that memorable day of Penticost, there fell upon the people of England a power to speak with one tongue, to appear as plaintiff against any single subject, to prove the doing of an act merely by averring it, and to subject the act to any penalty which the whim of the hour might suggest by calling it a "high crime and misdemeanor."

The fullest report I have seen of that "leading case" is found in the history of Edward III, by Joshua Barnes, of Emmanuel College. From that report we learn the enterprising prosecutor assumed the right to make the laws which should control his suit. This of course was a legal necessity. There was no law extant declaring what was or was not impeachable conduct, or what penalties might or might not be inflicted upon conviction.

The word impeachment was scarcely known to the English language. The thing itself was wholly unknown to the English polity. Of course there was but one rule for the Commons to follow in framing their indictments or for the Peers to follow in giving judgments. That rule was prescribed by the humor of the times. Accordingly, in some counts the defendant was accused of misconduct in England. In another of misconduct in France. His own conduct was arraigned in one count, and the conduct of his officers in another. The embezzlement of military funds was joined with the loss of a military post. It was a strange event. A suitor, before unknown, appeared in a court before unheared of to demand the infliction of penalties prescribed by no law, upon conduct prohibited by no statute, upon allegations sustained by no proof. Prosecutor, tribunal, crime, and punishment were each and all but the suggestion of the hour. The historian says:

> The said lord answered every objection, as it would seem by the record, and very well voided them in open Parliament.

Nevertheless he was removed from all employments, committed to the Marshalsea, and fined 20,000 marks.

> But the king—

says the historian—

> was pleased wholly to remit both the fine and imprisonment; and the year following, on the Lords and Commons themselves representing to the king that he had been deprived of his offices and put from the privy council by undue suggestions, he was restored unto them again.

However, some weak historians, who resemble the common people in clamor and want of judgment, say how that was done in the king's declining age, after the death of Prince Edward, when he had taken his son, John of Gaunt, to be his assistant in the government. The indignation of the historian is manifestly just. The policy of the king in the impeachment of Latimer gives no indication of the king's impaired vigor, but rather of perfected judgment. He had found it impracticable to make the nobles fear him by any penalties which he could impose. He taught them therefore to fear the people, and to cling to him for protection against the penalties which they could impose. He found that royal pardons were a firmer bulwark of his authority than royal punishments. Such was the origin of the anomalous proceeding by parliamentary impeachment.

During the succeeding seventy-four years it was employed on several different occasions. In 1449 the Duke of Suffolk was impeached. The articles of impeachment embraced eight distinct complaints. The first will suffice for a sample. It accused the defendant that he meant to marry his own son to the daughter of the Duke of Somerset, and then if the king had no issue to make claim to the crown! According to Hallam that was the last impeachment known in England for nearly two hundred years. The character of those times forbids the inference that official life was too pure to furnish occasion for such a remedy. The known character of the monarchs who reigned during that long period compels the inference that they felt no need of the aid of Parliament in disciplining their subjects. The English process of impeachment was therefore indigenous, endemic, intermittent, paroxysmal. It could be prosecuted only by the Commons and tried only by the Lords. But it could be prosecuted against any man whether in or out of office, and for any conduct which the Commons pleased to call "high crimes and misdemeanors." It dispensed the whole arsenal of penalties; removal from office, disqualification, fines without limit, imprisonment without end, banishment, death.

The proceeding did not abate by the resignation or removal of the respondent; not even by his death; not even by the prorogation or dissolution of Parliament. It was probably the only form of suit known to any system of judicature which held its course to the end in spite of the death of all parties—plaintiff, defendant, and umpire. Such a remedy may serve good ends in certain states of society, as

lightning may in certain states of the atmosphere, but lightning cannot be profitably employed in fair weather, nor can such a remedy be tolerated under free institutions. It has had its day in England and has doubtless appeared there for the last time. The unwieldy forms of parliamentary impeachment are no longer needed to remove a corrupt minister from office. If Parliament by a majority vote now declares a want of confidence, the minister must remove himself. And the time has long since passed when any nobleman, however exalted, can control the judgment of a court, or punish the judge for rendering it. If now a crime is to be punished, Englishmen would doubtless prefer to employ for that purpose the courts of law rather than the high court of Parliament.

Lord Campbell admits that the attempt to impeach Hastings brought the process into disrepute. Nevertheless it was employed against Lord Melville less than twenty years afterward. But for the last seventy years the great mediæval remedy has had no employment in England. No statute created the remedy; no statute repealed it; it was born of dire necessity. Let us hope that it has perished with its cruel mother. But whatever may be the fate of impeachment in England, it lives here.

The question before the Senate is, upon what conditions does it live here? The procedure known in England as parliamentary impeachment never was imported. Before the Federal Constitution was heard of, several States had provided for a sort of impeachment in their local constitutions; but not one of them permitted the life, the liberty, or the property of a citizen to be touched through its terms. Some States ignored the remedy altogether.

It was scarcely possible the subject of impeachment should have been overlooked by the convention which framed the Constitution of the United States. While that convention was executing its great task, England was frenzied with the preparations for that splendid pageant which opened the next year with the impeachment of Warren Hastings. His case was present to all minds, and was debated by all lips. It suggested to the convention the very description of offenses for which officers might be impeached. (See Madison Papers, volume 3, page 1528; remarks of Colonel Mason.)

The most cursory reading of our Constitution shows that it, like the constitutions of each of the States, jealously guarded the life, liberty, and property of every citizen against the process of impeachment. Not a drop of blood can be shed, not an hour's imprisonment, not a dollar in fine can be imposed as the penalty of impeachment. But the question before us is, against whom does the remedy lie? Is it given against officers only, or does it extend to those who have been officers, or may it be employed as well to disqualify those who have never held public trusts from holding one? We know that only the House of Representatives can prosecute an impeachment. We know that only the Senate can try one. We know the utmost extent of its judgment upon conviction. Of what cases it can take jurisdiction we need not now inquire; but of what parties the Senate can take jurisdiction we must now determine. In deciding this question we are compelled to rely mainly upon the text of the Constitution. Beyond that there is little which can be called authority. First, what clause of the Constitution is it which limits the jurisdiction of this court as to parties?

Lawyers do not seem to agree even upon this question. The first reference to impeachment in the Constitution is in the first clause of the first section of the first article, which declares: "The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment." It has been argued that that is the jurisdictional clause. Several considerations to my mind seem to repel that conclusion. First, such is not the natural import of the words. They clearly define who may prosecute an impeachment, but do not suggest who may be prosecuted. Second, if that clause gives any power, it gives too much. If it authorizes the House to impeach anybody, it authorizes it to impeach everybody. And every citizen stands to-day within the perils of impeachment unless excepted by subsequent clauses of the Constitution. Third, the report of the debates of the convention indicates unmistakably that the clause in question was designed to point out the party to prosecute, and for no other purpose whatever. That clause was agreed to without debate or division. All in the convention were agreed that only the House should be authorized to impeach. But members differed as to who should try the impeachment, as to who should be impeached, and as to what offenses should be impeachable. But had they understood that this clause did more than define the prosecutor, these differences of opinion would have appeared before the clause was agreed to. Fourth, such a construction is not in harmony with the received interpretation of other and kindred clauses of the Constitution. For instance, the first section declares that—

All legislative powers herein granted shall be vested in a Congress.

That never was understood as a grant of power to pass any particular law, or as defining legislative power at all. Other and apter clauses were employed for that purpose. So the first section of article 2 declares:

The executive power shall be vested in a President.

But no lawyer understands those words as a definition of executive power. So the first section of article 3 declares:

The judicial power of the United States shall be vested in one Supreme Court, &c.

No one ever understood that clause as giving jurisdiction to any court of any particular case. Other provisions were carefully framed for that purpose. It is the established method of the Constitution to nominate first the tribunal to which any class of powers is to be granted, and then to enumerate the powers of that class to be granted.

In harmony with that method the Constitution declares that—

The sole power of impeachment shall belong to the House of Representatives.

But, if we would know what that power of impeachment is, we must search for it elsewhere in the instrument. Undoubtedly the Constitution uses some words and some terms the true meaning of which we can only gather from the common law. Undoubtedly "pardon" is one of those words; probably "jury" is another: probably "due process of law" is one of those terms. Undoubtedly the Constitution uses many words the true meaning of which we can find only in the dictionary. But there are some words and some terms used in the Constitution for the true significance of which we are not left either to the common law or to the lexicographer. "Legislative power," "executive power," "judicial power," are unquestionable examples. "Treason" is unquestionably another; and to my mind "impeachment" is unquestionably another. Each one of those terms was clearly defined in the common law. But the Constitution is careful to define each one of them itself; and when the Constitution takes pains to define a word, it seems to me courts should adopt that definition. I am therefore forced to believe that when the convention declared the House of Representatives should have the sole power of impeachment, they did not mean to make a grant of power, but merely to appoint a grantee to take power. We must look elsewhere in the Constitution for a description of the grant. No one pretends that grant is described in the third section. The words are:

The Senate shall have the sole power to try all impeachments.

Of course the power of the Senate to try is not broader than the power of the House to prosecute. The two clauses when taken together obviously mean only this: that when one is to be impeached the House alone shall prosecute him, and the Senate alone shall try him. Neither clause answers, or attempts to answer, the great question who may be impeached. Another provision of the same section is as follows:

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

That provision clearly answers one question, but not the question just asked. In the most explicit terms it limits the judgment which can be rendered in any case, but it does not hint at the sort of a case in which judgment may be rendered. It tells clearly what may be done to one impeached; but does not tell at all who may be impeached. As yet the Constitution has disclosed only three things: First, who may prosecute an impeachment; second, who may try an impeachment; third, what may be the judgment in case of impeachment. But we have not a suggestion as to who may be impeached. I myself find that in the fourth section, second article, and I can find it nowhere else. That section reads:

The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

In that clause we find the answers to two questions: It tells not only who may be impeached, but also for what one may be impeached. If section 4 had been divided into two sections, if one section reads, "The President, Vice-President and all civil officers of the United States shall be liable to impeachment," and the other reads, "Treason, bribery, and other high crimes and misdemeanors shall be deemed cause for impeachment," it seems to me there could have been no two opinions upon the true interpretation of either of the five provisions. I think all lawyers and all men of sense would have agreed in that case that the first provision merely appointed the party to prosecute; the second merely the court to try; the third merely the judgment to be rendered; the fourth merely the parties to be prosecuted; and the fifth merely the conduct to be arraigned. There would have been no ambiguity in such provisions and no room for interpretation of them. They would be as plain in themselves as interpretation could make them. But surely it will not be contended that combining the enumeration of offenses with the description of parties to be prosecuted makes either the enumeration or the description less certain. The ambiguity, if any, is in the first part of the section. That does not, in fact, say that the officers described shall be liable to impeachment. It says that they shall be removed from office on impeachment. The other is the more natural form of expression, and is doubtless the form the convention would have used if its method of drafting the Constitution had been those I have employed in interpreting it. If the draughtsman had reflected as he sat down to draft section 4 that the prosecutor and court and judgment had already been provided for and that he had the single purpose to provide who should be liable to impeachment, doubtless he would have employed some such language as I have used. But such was not the course in preparing the instrument; on the contrary, a careful examination of the debates of the convention will discover the fact that until nearly the close of the session impeachment was considered merely as a method of removing the President from office.

The convention opened on the 14th of May. After nearly three months had been expended in deliberation no one had suggested the application of impeachment to any one but the President. On the 6th

of August Mr. Rutledge reported from the so-called committee of detail a connected scheme for a constitution, presenting in due form all that the convention had agreed to up to that time. That scheme provided, as the Constitution now provides, that the House of Representatives shall have the sole power of impeachment. But the only officer or person exposed to impeachment was the President of the United States. In the article creating the executive office it provided that he should be removed from his office by impeachment. It provided for the impeachment of no one else, and therefore they made the Supreme Court, instead of the Senate, the tribunal to try impeachments. It was not until the 8th of September, just one week before the close of the convention, that it was proposed to extend impeachment to any one except the President. On the morning of that day all that had been agreed upon the subject of impeachment was that the House should have the sole power to prosecute; that the court should try; that judgment should extend only to removal or disqualification; that treason and bribery should be the only causes for impeachment, and the President the only subject of impeachment. On that day Mr. Mason moved to add after "treason and bribery" the words or "maladministration." Mr. Madison objected that the term was too vague. Whereupon Colonel Mason withdrew maladministration and substituted "or other high crimes and misdemeanors against the state." That was agreed to. Subsequently, on the same day, "United States" was substituted for State. Then that clause of the tenth article relating to the President stood:

> He shall be removed from his office on impeachment by the House of Representatives and conviction in the Supreme Court of treason, bribery, or other high crimes and misdemeanors against the United States.

Still impeachment was regarded merely as an incident of the presidential office. Then a new clause was moved in the following words:

> The Vice-President and other civil officers of the United States shall be removed from office by impeachment and conviction aforesaid.

That was agreed to. Then the convention transferred the power to try impeachment from the Supreme Court to the Senate, and provided that a vote of two-thirds shall be required to convict. That completed the plan for impeachment. That day's work virtually completed the Constitution. It was Saturday. On Monday following some motions to reconsider were made. Some general debate was indulged in, and the plan was referred to the committee on style and arrangement. That committee very naturally left the power to impeach to stand where it stood, among the powers of the House. It transferred the power to try impeachments from the article enumerating judicial powers to that section of the first article which treats of the composition and prerogatives of the Senate. It transferred the clause making the President impeachable from that section which enumerates the attributes of the presidential office to that provision which makes the Vice-President and other civil officers removable, and made that section 4 of the Constitution. Section 4, therefore, is compounded of two distinct ideas or plans, adopted by the convention at two different times. One is the plan for removing the President from office, and the other, evolved long afterward, is the plan for employing impeachment. When giving expression to the first idea, it was most natural and most appropriate to say he shall be removed on impeachment. And having that formula right before them when giving expression to the second idea, it was surely more natural, if not so appropriate, to use it for that purpose. But after all, when the statute says that one convicted of murder shall be hanged by the neck until he is dead, and says the same of no other offender, it is quite as clear a limitation of the power of the gallows as if the law said "hanging shall be inflicted only on the murderer." I cannot avoid the conclusion, therefore, that the uses of impeachment are limited in the fourth section of the second article, so far as parties and offenses are concerned. It may be employed against any party and against any offense there named, but against no other.

It has been ably argued that if possible a constitution or a statute should be so construed as to give some effect to every part of it. Within certain limits that rule of construction is a sound one.

The construction I have employed gives not merely some effect, but a distinct office, to every clause of the Constitution relating to impeachment. One appoints the prosecutor. One appoints the umpire. One prescribes the judgment; and another defines the parties and the cases.

But if, on the contrary, we accept the last clause of the second section of the first article as a jurisdictional clause, it will be impossible, it seems to me, to give the slightest effect to one single syllable of the fourth section of the second article. The whole is absolutely without meaning. Will it be said that the fourth section extends impeachment to treason, bribery, or other high crimes and misdemeanors? Why those are the very words upon which the Commons of England have impeached British subjects for five hundred years. If the first article authorizes the House to impeach for any offense, it authorizes the impeachment for just these offenses and no others. These words embrace all the offenses against which impeachment lies in England.

Will it be said that the fourth section extends the remedy to civil officers? Why, when was it doubted that a common-law impeachment lay against a civil officer? If under the first article the House could impeach anybody, is it not and was it not certain it could impeach a civil officer? Will it be said that the fourth section excludes military and naval officers from impeachment? But it does not exclude military or naval officers. If under the first article the House of Representatives is clothed with the common-law powers of impeachment, the fourth section does not abridge those powers.

Is it supposed that the office of the fourth section is to authorize the removal of civil officers? Was ever a civil officer convicted on impeachment before the House of Lords and not removed?

Was it the office of the fourth section to extend impeachment to the head of the executive department? Why, the records of the convention show that impeachment against the President had been provided in the frame of the Constitution for weeks before the fourth section was thought of.

Unless, therefore, we hold the fourth section to be *the* clause which confers jurisdiction over parties and causes, it supplies no purpose whatever in the instrument.

Against whom, then, does the fourth section give the remedy by impeachment? Clearly against those enumerated in it, and not against those not enumerated. Against the President and the Vice-President, because they are expressly named, and against all civil officers because they are expressly named. But not against military officers; not against naval officers; not against church officers; not against officers of a municipal or private corporation or of a literary society; least of all against such as are not officers of any possible description.

But when may impeachment be preferred against a *civil officer*? It seems to me, if we were not more learned than sensible we would conclude at once that the best time to impeach an officer is when he is an officer, and not when he is a priest, a parson, or a private citizen.

Yet it is argued strenuously that if a disbursing officer embezzles the public funds, he may be punished for the act after he has left the office. Undoubtedly he may. And we are asked why he may not then be impeached also, after he has left the office? For the plain and sufficient reason that the two remedies have totally distinct aims, may be therefore applied at different times, though they may be both applied to the same person. One remedy is given against a crime and the other against a position; one is for the punishment of an offender, the other for the purification of the public service; one is meant to reform a criminal, the other is meant to reform an office.

Impeachment under our Constitution is a remedy whereby one who is proved to be unfit to hold office may be removed from it. It is true, disqualification may be an incident of judgment. *Quo warranto* is a remedy by which one who has unlawfully intruded into an office may be removed from it. Costs are an incident to that remedy. But it is well understood that *quo warranto* can only be prosecuted against one who is in the office at the time of service. If he vacate the office before commencement of the proceedings, the suit cannot be instituted for the purpose of recovering costs. So different remedies are given against him who unlawfully enters upon real estate. Trespass is given to punish the wrong-doer and to compensate the party injured. That can be prosecuted against the wrong-doer after he has abandoned possession. Ejectment is a remedy provided for removing the unlawful intruder from possession. That, however, can only be prosecuted against the party who is in possession at the time of the commencement of the suit. So replevin is a remedy given against one who unlawfully detains the goods of another; but it can only be prosecuted against him who is in possession of the goods. If he abandon possession before suit is commenced, replevin will not lie; though other forms of procedure are provided by law to redress the injury done to the lawful owner.

Having thus stated my own interpretation of the different constitutional provisions touching impeachment, I proceed briefly to notice what others have said upon this subject. As before remarked, there is very little upon the point we are discussing which can be called authority. Mr. Rawle alludes to and dismisses the subject with this brief remark:

> It is obvious that the only persons liable to impeachment are those who *are* or *have been* in office.

That opinion was advanced by Mr. Rawle with but very little consideration of the subject, and is therefore entitled to but very little consideration from us. All we learn from it is that in the opinion of the commentator one who has been in office may be impeached if he has left it. Evidently Mr. Rawle thought that the jurisdictional clause is not in the first article, but, as I have contended, is in the fourth section of the second article.

No man who holds that under the first article the House of Representatives is clothed with the common-law powers of impeachment will seriously insist that only those who are or who have been in office are liable to impeachment. And yet it has been intimated, and more than intimated in the course of this debate, that in England the House of Commons could impeach only those who were in office or who had been in office.

There is no authority for asserting such a limitation. Impeachment, as we have already seen, is in England not a power granted to the House of Commons, but a power assumed to be inherent in it. They impeach, not because any higher power has licensed them to impeach, but because they choose to impeach. Of course they impeach all whom they choose to impeach. If a statute could be found declaring that only those who were or had been in office could be impeached, of course that would be a limit upon the power of impeachment. No such statute has been found. No such statute can be found. Or, if a case could be produced when the house had refused

to impeach because the party was only a private subject, that might be construed as a limitation upon the common-law power of impeachment. No such case has been adduced. On the contrary, Mr. Tomlins expressly declares that—

A peer may be impeached for any crime. A commoner cannot, however, be impeached before the Lords for any capital offense, but only for high misdemeanors.

Edward Fitz Harris never held office. He was a papist. He was disqualified for holding office. But in 1681 he was impeached by the House of Commons, and impeached for high treason. It is true the Lords threw out the impeachment, but not for the reason that Fitz Harris had not held office but because he was a commoner and was impeached for a capital offense. But even in that judgment the House of Commons did not concur. On the contrary they voted—

That this refusal of the Lords was a denial of justice, a violation of the constitution of the Parliaments, and an obstruction to the further discovery of the Popish plot.—*Kennet's History of England*, volume 3, pages 386, 387; *Hansard's Parliamentary History*, volume 4, page 1263.

Upon the authority of the case of Fitz Harris, Woodeson says:

All the king's subjects are impeachable in Parliament but with this distinction: that the peer may be so accused before his peers of any crime; the commoner (though perhaps it was formerly otherwise) can now be charged with misdemeanors only, and not with any capital offense.

Mr. Bouvier clearly indicates the opinion that the jurisdictional clause of the Constitution is in the fourth section of the second article. He says:

The persons liable to impeachment are the President, Vice-President, and all civil officers of the United States.

He does not intimate that any one else can be impeached. But he does not express an opinion as to whether the impeachment must be commenced while the defendent is still in office.

In 1794 William Blount was impeached by the House of Representatives for misconduct while Senator from the State of Tennessee. Blount pleaded, first, that he had ceased to be Senator from Tennessee; and secondly, that a Senator was not a civil officer within the meaning of our Constitution. To that plea the managers on the part of the House demurred. Thus the issue was clearly presented:

Can one not a civil officer under our Constitution be impeached; and, if not, is a Senator a civil officer?

These questions were elaborately argued by Mr. Ingersoll and A. J. Dallas for the defendant, and by Mr. Bayard and Mr. Harper on behalf of the managers. The debate by the Senate was held with closed doors. What was there argued we do not know, but what the Senate decided we do know. Their resolution was in the following words:

The court is of opinion that the matter alleged in the plea of the defendant is sufficient in law to show that this court ought not to hold jurisdiction of the said impeachment, and that the said impeachment is dismissed.

That resolution was confirmed by a vote of 14 to 11. And there is an express judgment of the Senate to the effect that jurisdiction over parties in impeachment is granted by the fourth section of the second article, and not at all by the first article of the Constitution; that such jurisdiction obtains only against civil officers, and that a Senator is not a civil officer. So much has been expressly adjudicated by the Senate of the United States. But in that case the Senate did not declare whether a civil officer might be impeached after he had left his office.

Justice Story, in his Commentaries on the Constitution, has considered this very question. He has left us the benefit of his opinion. It is explicit and I quote it:

As it is declared in one clause of the Constitution that "judgment in cases of impeachment shall not extend further than a removal from office and disqualification to hold any office of honor, trust, or profit under the United States," and in another clause that "the President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes or misdemeanors," it would seem to follow that the Senate, on the conviction, were bound, in *all* cases, to enter a judgment of removal from office, though it has a discretion as to inflicting the punishment of disqualification. If then there must be a judgment of removal from office, it would seem to follow that the Constitution contemplated that the party was still in office at the time of impeachment. If he was not, his offense was still liable to be tried and punished in the ordinary tribunals of justice. And it might be argued with some force that it would be a vain exercise of authority to try a delinquent for an impeachable offense, when the most important object for which the remedy was given was no longer necessary or attainable. And although a judgment of disqualification might still be pronounced, the language of the Constitution may create some doubt whether it can be pronounced without being coupled with a removal from office. * * * There is also much force in the remark that an impeachment is a proceeding purely of a political nature. It is not so much designed to punish an offender as to secure the State against any gross official misdemeanors. It touches neither his person nor his property, but simply divests him of his political capacity. (Commentaries on the Constitution, § 803.)

It may be said of this opinion that it does not amount to the dignity of an authority; that Judge Story had no case before him on which to give judgment, and that he had not the aid of argument by counsel. It is true, the commentator had no actual case before him. It is, however, equally true that he had *all* possible cases before him. He saw the question might arise. He considered it as a practical question. It is true, he was not aided by the argument of counsel on either side; but it is equally true that he himself argued it on both sides; and when Judge Story had argued a question on one side or the other he usually left little for argument to do by way of elucidating it.

But it is said that if impeachment will lie only against one in office, then a corrupt official can escape impeachment by resigning his office before he is impeached. That seems to be true. So also a murderer, not merely after accusation, but after conviction, can escape hanging by cutting his own throat. There are two ways by which the citizen can escape impeachment: one is by resigning office before the proceeding is commenced, the other is by never taking office. I am not sure there are but these two. It seems to me better to leave the citizen these two chances. He must have both or neither. If the first article gives to the House the dangerous power to impeach a man because he has once been in office, it gives it the power to impeach him also because he is in danger of getting into office. One is given as surely as the other.

The rule of construction contended for by the managers clothes these two Houses with the power to disqualify every man known to aspire to the Presidency or to any other office; and to do that upon conviction of any conduct which we deem to be a high crime and misdemeanor, whether any law denounces it as such or not; and to do that regardless of the question whether the aspirant be now in a civil or a military office, or in no office at all.

But again we are admonished that if a corrupt official can escape impeachment by resigning his office, he may thereby escape part of the consequences of his crime. He may avoid disqualification. And it seems to be insisted that the well-being of the Republic depends largely, if not mainly, upon a vigorous administration of disqualifications for holding office. I am less impressed by this argument than perhaps I should be but for two facts: one is that I have been so diligently instructed for these many years past that not merely the welfare but the existence of the Republic depended not upon imposing disqualifications for office, but upon removing them; the other is, that it by no means follows that a delinquent official who avoids an impeachment thereby avoids disqualification also. That depends upon the nature of the offense with which he is charged. If he is accused of an offense for which the law has prescribed disqualification, then he does not escape that infliction by escaping impeachment. Then, although impeachment may not reach him, other criminal process will. The Senate may not try him. The courts can. And that sentence of disqualification which the Senate does not pronounce the courts can inflict. When, therefore, this Senate strains the office of construction in order to take jurisdiction of one not in office, for the mere purpose of disqualifying him from ever entering office, it does so for one or the other of two reasons: either because the Senate desires to disqualify for conduct against which the law has not prescribed disqualification, or because it would disqualify for conduct against which the courts are authorized to pronounce just that sentence, and because the Senate has more confidence in its disposition and ability to do justice than it has in the ability and disposition of the courts of law. If this last is the conviction of the Senate, it is one in which the convention which framed our Constitution never shared. That convention intrusted to the courts of law enormous powers for punishment. It intrusted to this Senate but very feeble powers in that direction.

I am more ambitious myself of persuading the world that the Senate might have been safely intrusted with more, rather than of proving that the little we have is quite too much. But I do not mean to shut my eyes to one of the disasters which are supposed to threaten the Republic. If we disclaim the jurisdiction now urged upon us, if the Senate fails to assert the authority to try one who is impeached after he has left the civil service, it is possible a case may arise in the future in which one may resign an office after the commission of acts for which he should be impeached. It is possible he may resign after the commission of acts for which the statute has not prescribed disqualification. If such a case shall occur it is clear that the individual may escape the sentence of disqualification, and so may be thrown upon the community with the possibility of being restored to office again at some future time. But I console myself with the belief that such a danger is not imminent. The man who resigns an office to avoid impeachment is very apt to resign at the same time all hope of returning to office again. There is very little danger that a sensible people will ever wish to restore to office one who has fled from an office to escape the process of impeachment. But if such a case should occur it is worthy of remark that the penalty of disqualification, if pronounced, would fall quite as much upon the people as upon the delinquent. At the same time that it disqualified the delinquent from returning to office it would disqualify the people from returning him to office.

And, in conclusion, I submit that it is hardly worth while for the Senate to assume a jurisdiction which at best is so doubtful, which never has been asserted, which has so often been doubted or denied, for the mere purpose of administering a penalty which must fall as heavily upon the innocent people as upon the guilty individual.

Opinion of Mr. Christiancy,

Delivered May 19, 1876.

Mr. CHRISTIANCY. Mr. President, I do not propose to enter into any elaborate argument nor to make a needless display of learning by the citation of authorities, (very few of which can have any direct bearing upon the case;) but simply to express my opinion upon the

questions involved, without any argument not actually necessary to render the grounds of my conclusions intelligible; stating results rather than details.

I may also say here, that in several matters which I shall discuss I have been anticipated by the Senator from New York [Mr. CONKLING] and the Senator from Wisconsin, [Mr. HOWE.] My remarks, however, had been prepared before either of those Senators had spoken and without knowing their views. I wrote nothing until I had heard the remarks of the Senator from Vermont on the day he first spoke, and completed my own opinion on the evening of the day after he had closed, except an allusion to the argument of the Senator from Iowa, [Mr. WRIGHT.]

But to proceed. This is not a mere ordinary case in a court of law, where the result is to be affected by mere forms, technicalities, or fictions; but a case of impeachment—a great state trial—an exceptional and extraordinary proceeding, before the Senate of the United States, in the last quarter of the nineteenth century. And upon such a trial, before such a tribunal, and at such a time, if we did not disregard mere forms and technicalities and all arbitrary fictions contrary to the acknowledged facts; if we did not look through and beyond all these to the substance of things, to the actual merits of the questions arising upon the facts as they are known and admitted to be, we should deserve the scorn and derision of the American people. And, on the other hand, if we should not give to the respondent all the substantial benefits of the great principles of the common law in criminal cases and the protection of every shield which that law, ameliorated and humanized as it has been by the spirit of the age, has thrown around a defendant on trial for a crime, we should equally deserve the execration of the nation and of the age in which we live. For although this is not, in the ordinary sense, a criminal trial, because the ordinary punishment is not imposed and the respondent is left liable to be tried in the proper criminal court and to be there punished to the full extent of the punishment imposed by the statute for the specific offense or offenses charged, the judgment of removal from office, with or without disqualification to hold office, being, as I think, imposed not for the purpose of punishing the offense as such, and for the ordinary object of punishment, but for the protection of the public against the danger of his continuance in the office whose trusts he has abused and against the risk to be incurred by being again placed in that or any other civil office of the United States after his conviction, and operating only incidentally as punishment upon the offender; yet the proceeding is, in a just and very high sense, a criminal trial for those offenses, so far as they directly affect the administration of the Government. And by the Constitution itself the respondent must be "convicted" by the Senate of the offenses, or some offense, charged, before any judgment can be pronounced against him; and the President has the power to grant reprieves or pardons for "offenses against the United States except in cases of impeachment," (article 2, section 2,) though this conviction and punishment are only for the merely political aspects of the offense, and form no part of, and cannot be pleaded in bar to, the punishment imposed by the statute upon the specific offense when prosecuted in the ordinary manner by indictment.

But the removal from office, as well as the disqualification to hold office, though imposed upon conviction only as a measure of prevention against the possibility of future misconduct in office, does incidentally operate as a punishment, a punishment which to him may be as severe and even more infamous than would follow a conviction in an ordinary court. It is, besides, in ordinary cases and in the constitutional view, so far as it can operate as punishment, additional to that which the statute may provide for the offense when prosecuted in an ordinary criminal court. And it makes no difference that under the particular statute charged in this case to be violated removal from office and disqualification to hold office are imposed upon a conviction by indictment. In all ordinary cases of high crimes and misdemeanors such is not the case, (it being now confined to cases of treason, accepting bribes by judges and by civil officers of the United States,) and the Constitution not requiring, though it may possibly permit, statutes of this kind, it is clear that none of these can affect the power or the nature of the impeachment, unless we can hold that Congress may alter the Constitution.

Such being the nature and character of the proceeding by impeachment, we are bound by the well-settled principle of construction in all courts, as well as by the nature of the question itself, to adopt a strict construction of the constitutional provisions establishing this mode of proceeding. By this I do not mean that we are to adopt an interpretation or construction contrary to what may clearly appear to our own minds to have been the intention of the convention which framed, and of the people who adopted it. But, unless clearly satisfied of the intention to include the case before us, or so long as we have any reasonable doubt that such was the intention, we should decline the exercise of the power; while, if the question were one of mere civil jurisdiction, we might perhaps properly enough weigh conflicting probabilities, and sustain the jurisdiction if the probabilities on that side seem to outweigh those upon the other, though serious and reasonable doubts might remain whether such had been the actual intention.

With these preliminary remarks, I proceed to inquire what is the main question in this case? It is simply whether Mr. Belknap, who had resigned the office of Secretary of War, and whose resignation had been publicly announced to the House before the first step had been taken by the House with a view to impeachment, could be afterward impeached, though on the same day, for prior official misconduct in that office, and is amenable to trial for such acts by the Senate. I state the question in this way, because the official record of the House, of which we are bound to take notice, and upon which the vote for impeachment rests, shows this fact, that prior to the first step taken by the House looking to impeachment, his resignation was announced to the House, which met only at noon, as having been made and accepted at 10.20 of that day.

For convenience I shall call this a question of jurisdiction, though it in fact is more than this, as it includes the question whether the penalty of disqualification is one to which he can be subjected or is at all liable. The question thus presented, like all other questions at the present stage of the case, is a clear, naked, dry question of constitutional law, to be decided, not by appeals to prejudice or passion, nor by any consideration peculiar to the defendant personally, nor by the consideration of the enormity of his particular offense, (which I would not extenuate,) nor of the corruption or degeneracy of the times, (which, though bad enough, is not unprecedented in the history of other countries, and even of this,) nor by what we may any of us think the Constitution ought to have provided as a remedy for such cases, but simply and solely by the provisions of the Constitution which our fathers saw fit to make and did make in reference to impeachments. Our province is not now to make a constitution to meet our own notions, but to interpret and administer that which has been made for us and which we are sworn to obey. As it is sometimes just as important to notice what is not, as what is, involved in the question before the court for decision, it may be proper to say here that the question of jurisdiction in a case where an officer impeached may have resigned after the vote of impeachment by the House or after the articles are presented in the Senate, and therefore after the jurisdiction has attached, is not before us. This may, and, as I am inclined to think, it would, rest upon different grounds. But it is enough for us to decide properly the questions before us, without attempting to settle the law in all other cases which may hereafter arise. It is quite obvious that when the resignation has taken place, as it did here, before the impeachment or any proceedings of the House to that end, the respondent, having already ceased to be an officer, is no longer removable from office, and so much at least of the object of an impeachment has failed. The question, then, is narrowed down to this: Are we satisfied beyond a reasonable doubt that, though the defendant is out of office, but liable to prosecution and the ordinary punishment prescribed for his whole offense in a court of law, it was nevertheless the intention of the Constitution that he should still be liable to impeachment for the mere purpose of disqualifying him from holding that or any other office of honor, trust, or profit under the United States?

Upon this precise question we have not the direct authority of any decided case arising under the Constitution of the United States, nor under the constitution of any State, the case of Barnard not falling strictly within the principle, as he occupied the same office without any interval between them, the termination of one term being the beginning of another, the office being still the same for the whole period. Does a man lose his identity when he passes from his twenty-fourth to his twenty-fifth year? And is there any interval between? The only case in which the question ever arose, even incidentally, was Blount's case, in 1797 and 1798. Blount was a Senator of the United States; and, as I remember the case, after the impeachment was voted by the House, and the House had impeached him at the bar of the Senate, but before the articles of impeachment were adopted or presented, the Senate proceeded to expel him from that body. He was a Senator when impeached, and, though not so when the articles were presented, yet, so far as can be ascertained from the arguments of counsel—and unfortunately, as the Senators gave no opinions which have become public, these arguments and the final decision are all we can judge from—the principal if not the only questions thought to be involved, or as I think really involved, were whether a Senator was a civil officer of the United States," within the meaning of that clause in section 4, article 2 of the Constitution, and whether any but civil officers were impeachable; but it did not, in so many words, determine the question whether a person out of office could be impeached for acts done in office, though, as I shall attempt to show, the whole decision was based upon an express ground wholly inconsistent with the idea that such impeachment could be maintained after he had ceased to hold office; for it was decided by a majority that he was not a civil officer, and therefore could not be impeached. The form of the final resolution adopted, it is true, was such that some might possibly have voted for it on the ground that he was not such an officer at the time the articles were presented, because of his prior expulsion, though this is not at all probable. And here it may be proper to say that the opinions expressed by counsel in that case and in some other cases, though gravely cited before us, are entitled to the same consideration as the opinions of the counsel on either side in the present case, and no more.

Much reliance has been placed upon the fact, that in England, persons out of office might be impeached for criminal conduct while they were in office. And this is claimed to be conclusive, on the ground that the Constitution has adopted the proceeding by impeach-

ment without defining it, as it has adopted trial by jury without defining it, and that we are therefore to resort to the meaning of the term as understood by the English law. But if it were entirely true, which I think it is not, that the Constitution has adopted impeachment without defining it, we should have to look to the English law only for the nature and form of the proceeding, not to ascertain, as I think, the persons liable to be impeached. And yet, even in this mode of proceeding, my friend, the Senator from Vermont, has agreed fully with me and strenuously argued, and the majority of the Senate have held, that we are not bound by the English precedents upon the question who should open and close the argument: and he has treated the English precedents in that respect with the disapprobation which they deserve. The facts, as I understand them, are that, by the English precedents—for we can hardly say by English law, where all law was set at defiance and a law made for each case as passion, prejudice, or political partisan advantage might dictate—impeachment was not confined to those who were or had been in public office, under the government, but extended to private citizens who had never been in office, and certainly, if they had but a collateral and indirect connection with a public office or trust, which, it has never until now been seriously claimed is or ever has been the case under our Constitution—and certainly cannot be since the decision in Blount's case. By the English precedents it was the practice to inflict the whole punishment supposed to be due to the offense, and without the restraint of any previous law or of any law but such as the caprice, or passion or malice, or popular indignation might at the moment demand. Such were some of the earlier cases, at least in reference to parties, to modes of proceeding and punishment, which became precedents; and we all know that whatever was once done in England in any judicial, quasi-judicial, or parliamentary proceeding, however awkwardly, unjustly, or unwisely done, was sure to be looked upon as the only proper mode of action in such cases, until the common sense or common humanity of the people forced the courts or the Parliament out of the old ruts into, or towards, the path of reason and humanity; and they have not even yet been driven into the path of equal justice in all things connected with the process of impeachment. Many of the precdents in impeachment cases—like those in their ordinary criminal courts in former times, which denied counsel or a copy of the indictment to a defendant in the higher grades of crimes, or, in capital cases, the privilege of having a witness sworn in his defense, and later, when allowed the privilege of having a witness sworn, if present, yet denied him a subpœna to compel the attendance of his witness, and many other precedents in times when an indictment or impeachment was equivalent to a conviction—are precedents "more honored in the breach than the observance."

But there was one feature of impeachment in England which does not exist under our Constitution, if that is to be construed as some have construed it here. The whole punishment to which the party was liable was imposed by the judgment, or, at least, it was so treated; and, however capricious or extraordinary that punishment was, the conviction and punishment on impeachment were practically a bar to any prosecution or punishment by indictment. And they did not violate the great principle that no man is to be punished twice for the same offense, which would be the case under our Constitution if the judgment on conviction by impeachment is to be considered, in any proper sense, punishment for the offense charged. The impeachment there was, in the full sense, for the purpose of criminal punishment, and the whole of the punishment due to the offense, as well as to get, or keep, the offender out of office. And such would seem to have been the case in Pennsylvania, under the constitution of 1776, which has been cited here, and which the Constitution of the United States certainly did not adopt, as the Senator from Pennsylvania [Mr. WALLACE] claims; for the Constitution of the United States does not allow the punishment usually imposed by the statute for the offense to be imposed at all as a consequence, or on the trial, of the impeachment, but leaves the party liable to be indicted and punished for that offense in the proper court; thus showing, as it seems to me, that the only object of the impeachment was to get the officer out of office, and, after his expulsion, to keep him out, though this may and does incidentally operate as punishment to that extent. But, as suggested by the Senator from Illinois, [Mr. LOGAN,] it is clear the framers of the Constitution did not consider removal and disqualification by impeachment as, in the just or legal sense, punishment for the offense charged, since they have expressly given to Congress the power to declare the punishment of treason, which is expressly made an impeachable offense. (Article 4, section 3.) And the same may also be said of several other offenses which might be the subject both of impeachment and indictment; and it can hardly be claimed that Congress was to have the right to alter the Constitution. (See article 1, section 8.)

In England impeachment was not founded upon, or in any respect regulated by, any express provision of a constitution or statute. The question must therefore turn exclusively upon the intention to be gathered from the several provisions of the Constitution upon the subject of impeachment, which it must be admitted are not as clear as they might have been made, perspicuity having, as in several other provisions of the same instrument, been sacrificed to brevity. And it is not at all strange that equally honest and equally able minds should reach different conclusions. The arguments are not (in the absence or disregard of precedents, or if the question is to be argued as a new question would not be) all on one side. Others have presented and will present those in favor of the power of impeachment in this case; and it is sufficient for me to point out some of the considerations which lead my mind to the opposite conclusion.

How are we to ascertain the intention of the Constitution, and whose intention is it which shall govern? It is the people of the United States who speak through this Constitution. It derives its force and validity from their adoption and ratification. It is their intent and their meaning we are to seek. As we believe they must have understood it, so we should interpret and obey it. It can make little difference what any particular member or any members of the convention—unless it clearly appears to have been a majority—may have thought of the effect of any particular provision. Some may have understood and intended these provisions in one way, some in another. Some may have voted for it with one object, others for an opposite purpose; but unless it clearly appears that a majority of the convention agreed in one and the same views, what they may have said or thought is of very little importance, as it would not have enabled the people, had they had the debates before them, which (to any considerable extent) they had not, to have determined the intention otherwise than we are ourselves compelled to do; and that is from the language used (in the Constitution) to express it, understood in the light of surrounding circumstances. If they looked to the constitutions of the several States at the time, they would see that upon the question whether a man could be impeached for official misconduct after he had ceased to be an officer, some State constitutions had no provision on the subject. Some States, as Virginia and Delaware, expressly permitted this as to the chief executive of the State; while in at least two others, Massachusetts and New York, it was, I think, very clear from the language of their constitutions that the impeachment could not be sustained after the offender was out of office. And they would also have discovered that the language in reference to impeachment adopted in the Constitution of the United States, was more exactly that of the constitutions of New York and Massachusetts than of any other State. And as the people of each State would naturally have been better acquainted with the constitution of their own State than that of any other, those in different States might possibly understand the same provisions differently.

If we look to the debates before the people and the State conventions, so far as they are preserved, we shall find but little, merely sporadic expressions, sometimes one way and sometimes the other, and showing nothing like a settled, general popular opinion; but as I think, upon the whole, rather opposed to the idea of impeaching a man out of office. And certainly I think this is the case with the series of papers called the Federalist, which probably had quite as much influence before the people as anything else. But look where we will outside of the language of the Constitution and we shall find no such unanimity or preponderance of opinion as to control that language into the support of the jurisdiction in question. We are, then, driven, as the people of that day were driven, (for finding the intention,) to the only legitimate source for them and for us, the language employed to express their intention. And to express my own opinion of that intention to be derived from the language of the Constitution I cannot do better than to cite the views of Judge Story in his Commentaries on the Constitution, (third edition, § 803,) which, though not intended to be given as a final or definite opinion, because the precise question had not yet been decided, nevertheless shows the result of his own reasoning; and his work shows that no man has ever examined the question more thoroughly. If the Madison Papers were not then published, the people in adopting the Constitution were as ignorant of them as Judge Story, who says: "As it is declared in one clause of the Constitution that judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office of honor, trust, or profit under the United States," and, in another clause, that "the President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors," it would seem to follow that the Senate, on the conviction, were bound in all cases to enter a judgment of removal from office, though it has a discretion as to inflicting the punishment of disqualification. If, then, there must be a judgment of removal from office, it would seem to follow that the Constitution contemplated that the party was still in office at the time of impeachment. If he was not, his offense was still liable to be tried and punished in the ordinary tribunals of justice. And it may be argued with some force that it would be a vain exercise of authority to try a delinquent for an impeachable offense, when the most important object for which the remedy was given was no longer necessary or attainable.

Again, Judge Story says, (§ 790,) in commenting upon the fourth section of the second article:

> From this clause it appears that the remedy by impeachment is strictly confined to civil officers of the United States, including the President and Vice-President. In this respect it differs materially from the law and practice of Great Britain. In that kingdom all the king's subjects, whether peers or commoners, are impeachable in Parliament, though it is asserted that commoners cannot now be impeached for capital offenses, but for misdemeanors only. Such kinds of deeds, however, as peculiarly injure the commonwealth by the abuse of high offices of trust are the most proper, and have been the most usual, grounds for this kind of prosecution in Parliament. There seems to be a peculiar propriety, in a republican government at least in confining the impeaching power to persons holding office. In such a government all the people are equal, and ought to have the same security of a trial by

ury for all crimes and offenses laid to their charge when not holding any official character, &c.

These extracts so exactly express my own views that I need say little more upon the main question. It is clear from these extracts (as well as sections 789, 790, 792, and 793) that Judge Story, as I do, and as the Senators from Ohio do, considered the fourth section of article 2 as a designation of the parties liable to impeachment under the Constitution, as well as the causes for such impeachment. But, unlike the Senators from Ohio, he did not draw the conclusion that these various parties when out of office were still impeachable, because he undoubtedly saw, what the Senators from Ohio cannot on reflection fail to see, that if this section be a designation of the parties liable to impeachment, such parties cannot be impeached when out of office, as it clearly refers to them as holding the office at the time of impeachment, and expressly declares that they "shall be removed from office on impeachment;" a thing which could not very conveniently be done, if they were not in office at the time of impeachment. Now whether, as contended by some, it is this section which gives the power of impeachment, or whether that power is given by the provision declaring that "the House shall have the sole power of impeachment and the Senate to try," &c., if this section 4 is to be understood as an enumeration of the parties liable or intended to be made liable to impeachment, then this enumeration operates as a limitation of the power of impeachment to the parties named or enumerated in the section; and there can be no escape from the conclusion that the parties named must be in office at the time of impeachment.

Look at the language, now, understood in the light of such limitation:

> The President Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Must not the President and Vice-President be in office at the time of impeachment, when the language is that "the President," &c., "shall be removed from office on trial and conviction?" And if such is the case with the President and Vice-President, must it not be the same with all the civil officers mentioned in the same sentence and connected by the conjunction "and?" Certainly no one can deny this. The Senator from Vermont admits, and no one capable of understanding language at all will deny, that under the clause of section 3, article 1, "when the President is tried the Chief Justice shall preside," only applies to the President while in office; and is not this equally clear here?

Having thus shown that, if the fourth section of article 2 is to be understood as an enumeration of the parties intended by the Constitution to be impeachable, there is no escape from the conclusion that they must be in office when impeached; I shall, in the proper place, endeavor to show that this section was intended as an enumeration of all the parties liable to impeachment, as some Senators on the other side expressly, and more of them by necessary implication, admit.

Several Senators admit that none but "civil officers of the United States" can be impeached, and that no one can be impeached except for the very crimes enumerated in this section; in other words, that the power is limited to the parties and offenses spoken of in this section. Certainly there is nothing else in the Constitution establishing the limitation.

For myself, I think the proceeding by impeachment was intended principally to secure the Government against official misconduct, and not at all for punishment, except as the removal and disqualification may incidentally operate as such. The punishment, as was remarked in Blount's trial, touches neither the defendant nor his property, but simply affects his political capacity. And I do not see the force which some Senators appear to see in the analogy so much relied upon between statutes, on the one hand, defining and punishing offenses by indictment, imposing two or more kinds of punishment for an offense, and, on the other, the constitutional provision in section 3, article 1 of the Constitution, which admits both of a removal and disqualification, absolutely requiring the first and admitting the second. The purpose of such statutes as were referred to, was to provide for the full punishment for the crime in the same prosecution by indictment. The whole purpose was punishment, and full and complete punishment, as such, in the ordinary legal sense, and all in the same single proceeding. While such, as I have endeavored to show, was not the direct purpose of the punishment which incidentally springs from removal and disqualification; and the Constitution expressly leaves the party liable to prosecution and punishment by indictment for the full punishment prescribed by law for the offense.

No species of legal argument is so liable to mislead as an argument based upon assumed analogies. *Nullum simile est idem*—no more like is the same; and before we yield to an argument from analogy, we ought to see that the instance assumed as the basis of analogy or standard of comparison contains all the important or essential elements which are contained in the provisions to be illustrated or the proposition to be demonstrated, and that there are no conflicting elements in the one which involve a different principle from those involved in the other. To give any force to the analogy relied upon, the statutes fixing the several penalties (one of which is found impracticable) should, like the Constitution, provide for a trial of a part only of the penalties at one time, leaving the defendant liable to another trial in another tribunal, and a separate punishment to be inflicted by each tribunal, or for a mere political punishment for the several offenses in one tribunal or at one time, and, for all other purposes and aspects of punishment, in another tribunal or at another time. But all these would not make the analogy complete without a provision tending to show that one of the penalties must in all cases be inflicted, leaving the other discretionary. And this last, without the other characteristics, would of itself be of little or no force. It will be time enough, therefore, to consider the supposed analogy when a statute containing all the foregoing characteristics shall be produced. As yet I know of none.

Again, it is insisted by those who maintain the right of impeachment in the present case, that those provisions giving the House the sole power of impeachment and the Senate the power of trying all impeachments, vests in the House and Senate the full power of impeachment as it existed in England, except as restrained by other clauses referring only to the mode of proceeding and the punishment. In my opinion those provisions amount to nothing more than a declaration that those bodies shall have all the power of impeachment and trial provided for under this Constitution, and that we are to look to article 4 of section 2 to find who are to be impeached, and to the last clause of section 3, article 1, for the judgment which alone can be rendered; that the clauses giving the House full power to impeach and the Senate to try impeachments were intended, as well for the purpose of distributing to each their respective share in the proceeding, as to give the power; and that the real meaning of those clauses, when construed in reference to subsequent clauses is, that the House shall have the power to impeach and the Senate to try impeachments in the cases thereinafter provided.

I listened to the argument of the Senator from Vermont upon this point, as upon every other, with attention, with pleasure, and, it is not too much to say, with admiration; and it is upon the ground upon which he has attempted to sustain the present impeachment that it must stand, if it can stand at all. But if his arguments and conclusions are correct, that we are to look to the English precedents to ascertain the parties who are impeachable, then not only the President and Vice-President, and the civil officers provided for by our Constitution to be appointed by the President or heads of Departments, or by the courts of law, as authorized by the Constitution, are impeachable, but Senators and Representatives and all other persons, at least who may be in any manner employed in the administration or aiding in the performance of the business or the protection of the interests of the Government as servants or as counsel, or otherwise; as all these, at least, would have been clearly impeachable under the English precedents. And the Senator from Iowa, [Mr. WRIGHT,] who adopts, upon this point, the same argument as the Senator from Vermont, boldly accepts this consequence, which, it must be admitted, is inevitable from such premises, and, in answer to the Senator from New York, holds that persons acting merely as counsel for the United States would be impeachable.

But unless we are to overrule and wholly disregard the solemn decision of the Senate in the Blount case (and if we are to be bound by any precedent whatever, it must be the decision of this, our own court) no such doctrine can be maintained; for it was the very ground and the sole and express ground of that decision, the very premises upon which the conclusion of his non-liability to impeachment was drawn, that none but "civil officers of the United States" were impeachable, and that therefore, though Blount was a Senator, he was not impeachable, not being a civil officer of the United States, "within the meaning of the Constitution;" and there is certainly no other provision of the Constitution which has been claimed or can be claimed to confine impeachment to "civil officers of the United States," except the provision of the fourth section of the second article. The inference is therefore absolutely irresistible, that they looked upon this section as limiting the power of impeachment to the parties mentioned in this section; and so Judge Story treats it, and expresses his opinion to that effect without any reservation or doubt whatever. (See section 790 *et seq.*) But this is not left to mere inference, conclusive as that is. It is in legal effect, expressed in the Blount case that this very section is the one to which they allude for this limitation to "civil officers." Let us see. The plea to the jurisdiction, in legal effect, set up two grounds: one that he was not a Senator of the United States at the time, &c., and, second, that, even if he was a Senator, he was not a civil officer of the United States, within the meaning of the fourth section of the second article of the Constitution, to which it expressly refers. (See the plea, Annals of Congress, volume 2; Wharton's State Trials.) The first ground was answered on the argument, according to the admitted fact of the case, that he was a Senator of the United States at the time when the acts charged were done and when impeached, which was true; and this point thereafter seems to have made no figure in the case, and quite clearly had nothing to do with the decision. The argument and the decision turned upon the second ground, whether a Senator was a civil officer of the United States within the meaning of the fourth section, article 2. Turn, now, to the decision.

The first resolution offered to the Senate, and of course, as sufficiently appears upon its face, this must have been offered by one of the Senators in favor of the jurisdiction, and it will be seen that even these resolutions go upon the admission that none but civil officers of the United States are liable to impeachment under the Constitu-

tion—which refers, of course, to this fourth section, as there is no other to which it could refer for such a purpose—but asserts nevertheless that Blount (being a Senator) was such civil officer, (January 7, 1799:)

Resolved, That William Blount was a civil officer of the United States within the meaning of the Constitution of the United States, and therefore liable to be impeached by the House of Representatives;

That as the articles of impeachment charge him with high crimes and misdemeanors supposed to have been committed while he was a Senator of the United States, his plea ought to be overruled. (See Annals of Congress, volume 2, page 2318. Wharton's State Trials, page —.)

The vote upon the resolution was 11 for, and 14 against it; so that it failed; showing that, by 14 to 11 the Senate determined, in effect, that a Senator of the United States is not a "civil officer of the United States," and was not therefore impeachable. This is clearly enough shown by the vote afterward taken on the 11th day of February, offered manifestly by some one opposed to the jurisdiction, as follows:

The court is of the opinion that the matter alleged in the plea of the defendant, is sufficient in law to show that this court ought not to hold jurisdiction of said impeachment, and said impeachment is dismissed.—Annals of Congress, volume 2, as above.

The vote upon this shows the Senators divided exactly by the same number, there being 14 for and 11 against it. Then look to the judgment and its announcement to the managers, which is in the following language:

The court, after having given the most mature and serious consideration to the question and to the full and able arguments urged on both sides, has come to the decision which I am now about to deliver.

The court is of opinion that the matter alleged in the plea of the defendant is sufficient in law to show that this court ought not to hold jurisdiction of said impeachment; and the said impeachment is dismissed. (Page 3319, volume 2 of Annals of Congress.)

Thus showing that the plea in effect asserting that none but civil officers of the United States could be impeached under the fourth section of the second article (which was expressly referred to) was sustained by the SENATE, and on this ground the impeachment was dismissed.

Who does not see that the whole conclusion rests immediately and entirely upon the ground, that none but civil officers of the United States could be impeached under the Constitution, that this is the entire premises from which the conclusion is drawn? Of what consequence was it to inquire whether a Senator was a "civil officer of the United States," if he could just as well be impeached whether a civil officer or not? And where in the Constitution does the limitation of the power of impeachment come from, if not from this section 4? It cannot be pretended there is any other limitation of this kind in the Constitution. Is it not perfectly clear, then, that the Senate treated this fourth section as such limitation or an enumeration of all parties intended by the Constitution to be impeachable? But finally let me ask, if this fourth section does not confine their power of impeachment "to civil officers of the United States," all of whom the Constitution provides shall be commissioned by the President, (article 2, section 3, also article 2, section 2,) why are not Senators and Representatives also impeachable? Why are not military and naval officers also impeachable? Members of both Houses of Parliament and military and naval officers were, I think, clearly impeachable in England. And if we are at liberty to determine the classes of persons liable to impeachment by English precedents, I can see no reason why all military and naval officers and Senators and Members of the House are not as clearly impeachable here as they ever were in England. And this must, I think, be the inevitable result, unless the fourth section of article 2 limits the power to the parties there mentioned. And yet it has been expressly admitted by some Senators who sustain the jurisdiction in the present case, and tacitly admitted, I think, by several of them, that the power, under our Constitution, does not extend to military and naval officers: and no one has yet contended in this discussion that it extends to Senators and Representatives or to military or naval officers. I do not know whether the Senator from Vermont claims that it extends to military and naval officers.

Mr. DAWES. Does not the same removal and disqualification follow a sentence cashiering an officer in the military and naval service as the Constitution imposes upon other officers on conviction by impeachment?

Mr. CHRISTIANCY. That may be so. But do not the same consequences follow upon conviction by indictment in a criminal court for the very offenses charged upon Mr. Belknap? If the fact of such liability to disqualification, without impeachment, can be alleged as a reason why impeachment should not be sustained in the one case, I do not see why it should not be equally efficacious in the other. Both stand upon the same ground, the authority of an act of Congress only, and not the Constitution. Is it denied that by the English law, or rather precedent, military and naval officers are impeachable? I have not hunted the precedents, taking it for granted that all of the older as well as more modern English writers who assert the power of impeachment to extend to all the King's subjects, knew better than any Senator here how the fact was. But, I read from Comyn's Digest, which I sent for a few minutes since, title Judicature of Parliament, 31, the following passages which show instances of the impeachment of naval officers for official delinquency in office, and there can be no reason for supposing that it did not extend as well to military officers, though, as I have not lately posted myself in English history, I do not happen at this moment to recollect an instance; but other Senators doubtless may. I read from Comyn, at the place cited above:

The Duke of Buckingham was impeached, for that he, being admiral, neglected the safeguard of the sea. (Rush. 308.)

The Earl of Oxford, that he hazarded the navy and had neglected to take ships of the enemy, 8 May, 1701, and for selling goods taken as admiral, for his own use, without accounting for a tenth to others, 8 May, 1701. (Ibid. L. 39.)

I will here say that I see nothing in this book, and recollect nothing in any other English work, ancient or modern, making any distinction between different classes of subjects, whether officers or not, subject to impeachment, nor anything which tends to controvert the assertion of so many English writers, that all the King's subjects were impeachable.

Mr. THURMAN. Does the Senator remember any particular instance of an impeachment of a strictly private person in no way connected with office?

Mr. CHRISTIANCY. I have not looked for any. When I find all the English writers from the earliest times asserting in effect that all British subjects are liable to it, and no English authority anywhere intimating any distinction between classes subject to it, nor that any but the king are not, the Senator will pardon me if I say I have more confidence in this uniform testimony of the English writers who had the best opportunity to know, than I have in the Senator, or any Senator here, who infers that all these English writers were in error simply because he has not found an instance.

If he were to apply the same reasoning to the common law generally, and deny everything to be law for which he could not find a decided case in the year books or in any English reports, he would leave very large gaps in the English common law.

The fact undoubtedly is that many principles of the common law, as well relating to the power of impeachment as to anything else, had become settled before the earliest reports or parliamentary records now extant, though the mode of exercising the power of impeachment has undergone several changes since the parliamentary records still extant.

I turn now to some miscellaneous citations from Comyn's Digest, lying before me, which happen to be on and near the page just cited, and which, in a miscellaneous manner, may tend to show for what offenses an impeachment would lie in England, and therefore for what they would lie here, if the fourth section of the second article does not limit the offenses for which impeachment may be sustained.

And if this fourth section does not limit the parties liable to impeachment, it does not limit the offenses for which it may be sustained. Nor is there anything elsewhere in the Constitution which would confine impeachments to "treason, bribery, and other high crimes and misdemeanors."

I read these miscellaneous examples, showing for what a man may be impeached. "The Earl of Bristol was impeached (2 Carolus) that he counseled against a war with Spain when that king affronted us, to the dishonor and detriment of the realm, (article 3, 1 Rushworth, 250;) that he advised a toleration of papists, (1 Rushworth, 251;) that he enticed the king to popery, (id., 252, 262;) the Spencers, that they gave bad counsel to the king, (4 Institutes, 54;) the Earl of Oxford, that he advised a prejudicial peace, (8th May, 1701.)

It is true these were privy councilors, but the offense was in giving advice to the king. If the offenses here for which a party may be impeached are the same as in England, (and without the limitation of the fourth section, article 2, as upon the argument of those who support the jurisdiction they must be,) how many Senators may be impeachable for advice given to the President, especially in reference to appointments? Is such advice one of the "high misdemeanors" mentioned in the Constitution?

But what shall we say of advising the toleration of papists? This, according to the English law of impeachment, was as much an impeachable offense as bribery or any other crime or misdemeanor; and upon the argument in favor of the jurisdiction here I see nothing to prevent its impeachment. There certainly is not, unless the fourth section operates as a limitation to the crimes and misdemeanors there mentioned, or the first amendment of the Constitution may so operate. And who in this country would not be liable to impeachment for this cause? Who does not advise the toleration of papists?

Again, the Spencers, father and son, were impeached, among other things, "for that they put good magistrates out of office and advanced bad." (4 Institutes, page 53.) How many Presidents and Secretaries might have been impeached here, if this is an impeachable offense, and how many Senators, as accessories before or after the fact?

Lord Halifax was impeached for obtaining grants of money forfeited for rebellion, (9 June, 1701,) for obtaining grants of money when there was a war and heavy taxes, and grants out of the king's woods, (L. 39,) and so on.

But, to come back now to Blount's case, which clearly settled the point that none but civil officers of the United States are impeachable, and that section 4 of article 2 of the Constitution was intended as an enumeration of all the parties liable to impeachment and of the offenses for which they were impeachable, I will say that decision has, from the day when it was made, been approved as sound law and met the general approval of the legal profession and of the people; and, in my opinion, to change or overturn it now would be justly looked upon as revolutionary. I must, therefore, for this and other reasons

already given, with diffidence, and I may say with reluctance, disagree with the conclusion of the Senator from Vermont and other Senators who have adopted his views, and hold Judge Story's view to be founded upon the sounder and the better reasons, and upon authority of a decision of this high tribunal itself.

My friend from Vermont also made, or attempted to make, an argument in support of the jurisdiction, based upon the use of the word "person," in section 3, article 1:

> And no person shall be convicted without the concurrence of two-thirds of the members present.

I agree with the Senator, and do not suppose any Senator will disagree, that, notwithstanding the Constitution in express terms speaks of the impeachment of the President, Vice-President, and other civil officers, yet, when a man who is an officer is prosecuted for an official crime, it is, when we come down to precise accuracy, the man, the person holding the office, who is prosecuted, and that the punishment on conviction is a personal punishment, not official; that, when he is removed from office, it is the man who is removed from the office, and not the office from the man. But these considerations only go to show that the use of the word "person," instead of officer, in the clause cited, whether the man is impeachable after the termination of his office or only while he continues in office, was correct, and entirely and equally correct, upon either view. The Senator will therefore permit me to say, with all deference, that he seems to me to have drawn a very large conclusion from very narrow premises, when he infers from the use of this word in this connection, that a man can be impeached when out of office, when the use of the word is just as consistent with the conclusion that he cannot. Unaided and alone, I certainly could not have drawn such an inference from such premises, and I am equally unable to accomplish the task with the powerful aid of the Senator himself; and he will pardon me for saying that his own effort in that direction seemed to me a little too much like catching at straws.

Mr. President, my conclusions upon the main question are—

First. That the main, direct, and primary purpose of impeachment is to put a man out of the office he may hold at the time of the impeachment.

Second. As a secondary and auxiliary safeguard against future misconduct in office after he has been convicted and expelled, to keep him out of that and all other civil offices of the United States; or, in other words, that the disqualification is but a discretionary incident of removal from office; and, therefore,

Third. That disqualification can only be imposed in addition to, and as a sequence of, the judgment of removal, and not as a single and substantive punishment.

I see no absurdity in this result. The respondent is still liable to be indicted in the proper criminal court and punished to the full extent of the punishment prescribed by the statute creating the offense; and the sacred right of a trial by jury is not to be disregarded, except in the clearest and most extreme cases.

These views render it necessary that I should also consider the other questions involved in the case.

And first, as to the fractional argument, the argument based upon the fractions of a day. And here allow me to say that, with my unsophisticated habits of looking at things as they are in fact, stripped of all mere forms and fictitious coverings, I certainly did not expect to live to hear it asserted in the United States Senate, upon a great state trial, that, though, upon the facts as they are admitted to be, the defendant is not liable to impeachment—and this argument proceeds upon this admission and has no bearing without it—we are at liberty, by a pure fiction, known to be and shown upon the record to be false, to exercise a jurisdiction based upon that falsehood and convict the defendant upon a pure fiction known to ourselves and the world to be a palpable lie. I am not ignorant of the fact that there are many fictions of law contrived for the purpose of justice in civil cases, which are or should be, always liable to contradiction when the rights of parties require it. I will not deny that precedents may be found in courts of law, especially in past ages, where fictions have been resorted to in criminal cases, to the prejudice of the defendant; for there is no enormity for which such precedents may not be found.

But when such precedents are invoked to show that the jurisdiction of a criminal court or the punishment of a defendant charged with a crime can be sustained upon a pure fiction, contrary to the known facts appearing upon the records, these precedents may be piled mountains high, and I shall treat them all with the contempt that all such falsehoods, urged for such purposes, deserve, in an age and a country of liberty and law.

Precedents standing upon palpable absurdities should share the fate of the absurdity upon which they stand.

But let us examine the fiction in the present case. Belknap resigned at 10.20 a. m.; his resignation was announced in the House at noon, or a little after, and late in the afternoon the vote of impeachment was adopted. It is now claimed that the law takes no notice of the fractions of a day, and therefore Belknap must be regarded as in office the entire day, or that the vote of impeachment must be regarded as having taken place at the beginning of the day, or at least before the resignation—for it makes no difference in which shape the falsehood is put, or whether it relate backward or forward. Falsehoods and fictions are very elastic, and very convenient to convict a defendant or to sustain a jurisdiction which cannot be sustained upon the truth of the case; especially if this fiction or falsehood cannot be contradicted and the actual precedence of the respective events shown as they occurred; and it is insisted we cannot inquire into the fact at what time of the day either fact took place, nor which preceded the other; but the whole day must be taken for both, because the law takes no notice of the fractions of a day.

This makes a very pretty argument, and it is a great pity to spoil it by putting a case. But duty compels us to do a great many unpleasant things. Say that on the same day that Belknap resigned a successor was appointed and confirmed—as well he might be—or take the case which did happen, of another Secretary assigned to the duties of the office on the same day and hour of the resignation, and that successor, or the officer so assigned, had, on the afternoon of the same day, been guilty of bribery or other impeachable offense. He is impeached; and on the trial he denies that he was Secretary of War or in charge of the duties of the office on that day, and to prove it shows by the record, or by Mr. Belknap himself, perhaps, that he, Belknap, was Secretary on the morning of that day, and stops there. Has he not made out a complete defense, if the fractions of a day cannot be inquired into? And as the fiction may just as well relate backward to the beginning of the day as forward to its close, why might not Belknap defend himself for bribery committed on the morning of that day, by showing that on that day another Secretary had been assigned to fill the office, whose assignment and responsibility must relate back to the first moment of the day? Now, in the case of these overlapping fictions would not every Senator admit that the truth ought to be allowed to escape between them?

I think I may safely submit it to the candor and good sense of the Senate that the succession of events or acts happening on the same day, and having relations to or affecting each other, may and ought always to be shown, whether in a civil or criminal case, as much as if they had happened on different days; and that our jurisdiction and the prosecution by impeachment can be maintained upon no such trivial falsehood, contradicted by the face of the record.

As to the question, admitting that a resignation in ordinary cases before the vote of impeachment would defeat the impeachment, would it have the same effect though made for the purpose of avoiding the impeachment? Upon this question I can entertain no doubt. The defendant had a perfect legal right to do the act, to make the resignation, and this cannot be rendered illegal or deprived of its legitimate effect, whatever his motive might have been, nor can that be inquired into.

These views render the other point contained in the resolution of the Senate in relation to the pleading, immaterial, and I therefore express no opinion upon it.

In conclusion, I must express my thanks for the indulgence of the Senate, and my regret that I have been compelled to differ with so many able Senators whose legal opinions I always respect and with whom I have generally agreed.

Remarks of Mr. Christiancy on the resolution offered by him May 29, 1876.

The question recurring on the second resolution of Mr. THURMAN, as amended,

Mr. CHRISTIANCY moved to amend the said resolution by striking out all after the word "resolved" and in lieu thereof inserting:

> Whereas the Constitution of the United States provides that no person shall be convicted on impeachment without the concurrence of two-thirds of the members present; and whereas more than one-third of all the members of the Senate have already pronounced their conviction that they have no right or power to adjudge or try a citizen holding no public office or trust when impeached by the House of Representatives; and whereas the respondent, W. W. Belknap, was not when impeached an officer, but a private citizen of the United States, and of the State of Iowa; and whereas said Belknap has, since proceedings of impeachment were commenced against him, been indicted and now awaits trial before a judicial court for the same offenses charged in the articles of impeachment, which indictment is pursuant to a statute requiring in case of conviction (in addition to fine and imprisonment) an infliction of the utmost judgment which can follow impeachment in any case, namely, disqualification ever again to hold office:
>
> *Resolved*, That in view of the foregoing facts it is inexpedient to proceed further in the case.

Mr. CHRISTIANCY. Mr. President, it being now manifest that considerably more than one-third of the Senators present on this trial believe there is no jurisdiction in the Senate to try this impeachment, I think the resolution I have submitted makes the proper disposition of the case. I do not propose to argue the question at length, but to state briefly my reasons for this conclusion.

The Constitution declares that—

> No person shall be convicted without the concurrence of two-thirds of the members present.

What is necessary to, and what is included in, the conviction here alluded to? But one answer can be given to this question, and that is, every constituent element, both of law and fact, necessary to constitute a valid conviction; and the first and most important of all these is the jurisdiction of the tribunal before whom the trial is to be had and the conviction pronounced, the right and power to try the case at all or to declare the conviction. If there be no such jurisdiction, no such power to try, any determination we may make, any conviction we may pronounce, will be simply *brutum fulmen*, so much empty air; for there will be no power to swear a witness in the cause and all testimony of witnesses, though given under the forms of an oath, must be extrajudicial, without the sanction of an

oath, and therefore not evidence which this tribunal have a right to hear or to act upon. From these considerations it is manifest that this question of jurisdiction, though a question of law, is inseparably connected with, and involved in, every question of fact which may arise in the cause.

It is fallacious, therefore, to say that this, being a mere question of law, may be determined by a bare majority, and that the only concurrence of two-thirds required by the Constitution is upon the facts of the case or those facts and the law which would be applicable to them on the hypothesis that we have jurisdiction.

All the questions which can ever arise in any trial are questions of law, questions of fact, and questions of the application of the law to the facts; and these last are mixed questions of law and fact, when the same person or body which finds the facts also applies the law to the facts and declares the combined result of both, like a jury in giving a general verdict.

But there is this difference between a jury and the Senate sitting as a court of impeachment, that the jury in matters of law are subject to the instruction of the court presiding over their deliberations and giving them instructions upon the law which they are bound to follow; and in giving their general verdict they find the facts and apply to them the law as given them by the court. Besides, a jury have generally a right to decline the application of the law to the facts by finding a special verdict setting forth the facts found and leaving the court to apply the law.

But in the Senate, on the trial of an impeachment, no such division of functions as to law and fact can be had. No court or officer presides over us with power to give instructions upon or to determine matters of law.

Every Senator, upon a trial on the merits, acts in the double capacity of judge and juror, and must for himself determine both the law and the facts and apply the one to the other according to his own convictions and judgment. And certainly no Senator can be any more bound by the opinion of any other Senator or any number of Senators upon a question of law than upon a question of fact. Each must not only draw his own inference from the evidence, but must apply that evidence to the law as he understands it to be.

It would therefore be just as absurd, under the constitutional provision requiring the concurrence of two-thirds to convict, to hold that a bare majority have a right to bind the minority upon questions of law as to hold that they have the right to bind them upon matters of fact. Propositions of law are as much involved and as essential elements in a valid conviction as propositions of fact, and they are involved in every step taken on the trial. And if this were not so, if a bare majority could control the minority upon questions of law arising upon the trial of an impeachment, such bare majority might also in many cases establish every element essential to a valid conviction in opposition to more than one-third of the Senate.

Let us consider some of the phases of the case and the questions which must naturally be expected and which usually occur upon a trial. On a trial upon the facts in the present case questions of the admissibility and of the materiality of evidence must naturally be expected to arise and almost unavoidably do arise upon all trials of the kind. These are questions of law. Now a bare majority think any particular testimony or piece of evidence offered admissible or material, as the case may be, but more than one-third of the Senate think it inadmissible or immaterial.

The bare majority, no doubt, may admit the evidence, but, in considering its effect upon the case, the minority, if they act upon their own convictions, will of course pay no attention to the evidence or give it any effect. Will any Senator claim that this minority are bound to disregard their own convictions as to the effect of such evidence because the majority hold that effect to be different? Are the minority, I mean, bound thus to yield to the majority when the result is declared upon the question of guilt or innocence? Would not this be allowing a bare majority to control as well upon the facts as upon the law? And would not this effectually fritter away the whole substance and effect of the provision requiring the concurrence of two-thirds to convict?

If, then, the decision of a bare majority in admitting evidence which the minority think inadmissible or immaterial cannot control the minority as to the effect of the evidence or bind them to give it an effect which they do not believe that it has, can or ought such majority to control such minority upon the question whether any evidence is admissible, and compel them to give effect to evidence, all of which they believe inadmissible, because the Senate has no power to try the case or to administer an oath, and because they believe all the testimony given in the case is extrajudicial, and that every witness may testify as he pleases without liability to the pains and penalties of perjury?

Is it not manifest that every proposition of law and fact which constitutes a necessary element of a valid conviction must be found and sustained by the concurrence of two-thirds of all the members present? And that if one if those elements, without which the conviction could not be valid, may be established by less than two-thirds, any other necessary element—and therefore every other—may be established in the same way and by the same course of reasoning? And what element can be more necessary to a valid conviction than the jurisdiction to try the case and declare the conviction?

Upon any question or any matter not an essential element of a valid conviction there is no doubt a bare majority may decide; but upon any proposition of law or fact without the establishment of which no valid conviction could be had, I am compelled to consider any majority less than two-thirds as no majority in the constitutional sense, and of no more binding effect than the decision of a minority.

Opinion of Mr. Whyte,

Delivered May 20, 1876.

Mr. WHYTE. Without entering into an analysis of the pleadings in this case, or expressing any opinion as to the artistic manner of their construction, it is sufficient that the broad question is evolved whether the accused can be tried for offenses alleged to have been committed while in office, upon an impeachment made after he ceased to be Secretary of War?

In my view of this case, it is not material to the point in issue to ascertain at what precise moment of time Mr. Belknap retired from the War Department.

Whatever may be said as to the abstract question whether private persons, that is persons who have never been in office, may be impeached, from a careful examination of the cases in the British Parliament, from whose parliamentary law we have drawn the principles relating to impeachment, it is clear that except in few and rare instances prosecution by impeachment has by a long line of precedents been confined to offenses of an official character, and as against persons as well in office as those who have vacated their offices. I hold the opinion, therefore, that any person charged with the commission of crime while in office can be impeached after he has ceased to be an officer, whether by expiration of his official term or by voluntary resignation.

I believe there is no limitation as to the time when prosecution for impeachable offenses can be had, save in the sound discretion of the House of Representatives.

Impeachment as a known method of procedure is ingrafted upon our Constitution. As it was understood and exercised at the period when the organic law was framed, subject only to the limitations set forth distinctly in the Constitution, so it is now to be exercised. In the language of Professor Dwight, the Constitution "assumes the existence of this mode of trial in the law and silently points us to English precedents for knowledge of details." Mr. Webster, also, when defending Judge Prescott, and speaking of a clause in the constitution of Massachusetts similar to that in the Federal Constitution, said:

> The Constitution has given this body [the Senate] the power of trying impeachments without defining what an impeachment is, and, therefore, necessarily introducing with the term itself its usual and received definition and character and incidents which belong to it.

Whenever foreign statutes are adopted into our legislation, the known and settled construction of those statutes by courts of law has been considered as silently incorporated into the acts.

So of impeachment; as it was regulated by the parliamentary law of England, so it is to be understood, with its specific limitations, however, as part of the constitutional law of our country.

The framers of the Constitution knew impeachment to be the mode of accusation and trial of "statesmen for misdemeanors in the administration of government." They knew that as early as the reign of Edward I the power of parliamentary impeachment had been exerted, and that judges convicted of exactions had been sentenced to severe penalties by the House of Lords; that during the reign of Richard II and under that of Henry VIII lord chancellors and archbishops and chief justices had fallen under a like condemnation; that under King James I Lord Chancellor Bacon had been the subject of impeachment, and Lord Finch and others had suffered during the reign of Charles I; that under Charles II chief justices of the King's Bench and Common pleas and barons of the Exchequer had been impeached by the Commons for various great official crimes.

Thus they had before them from various epochs of English history many instances of parliamentary impeachment.

It would indeed belittle Madison and Hamilton, Sherman and Pinckney, and the other intellectual giants of that great council to suppose they did not understand in all its scope the power of impeachment, which they were then importing into our federal form of government. Some of them had access to Comyn's Digest, Bacon's and Viner's Abridgments, Rushworth's Historical Collections, and Selden's Judicature of Parliament, and Howell's State Trials; and Pinckney had, indeed, sat at the feet of Gamaliel, for he had listened at Oxford to the splendid law lectures of Blackstone, which now as his Commentaries, more than a century after their delivery, are to be found in the hands of every law student in our land. They knew, also, that in this method of criminal procedure, since the time of Edward III, the House of Commons accused and the House of Lords tried. So they gave the sole power of impeachment to the House of Representatives and the sole power of trial to the Senate. Thus the trial by impeachment, without specially defining it, was adopted from analogy to the English constitution.

The makers of the Federal Constitution gave this power of trial by impeachment to the two Houses, as above stated, in all its plenitude, and then by subsequent special limitations restricted it in its details

wherever they intended its power to be restrained. The power itself they never intended to curtail; for, when they added "high crimes and misdemeanors" to treason and bribery, Colonel Mason remarked:

As bills of attainder, which have saved the British constitution, are forbidden, it is the more necessary to extend the power of impeachment.—*Madison Papers*, volume 3, page 1528.

And it is remarkable if true, as asserted, (and from the similarity in the two instruments the assumption seems to be well founded,) that the impeachment clauses in article 1 of our Constitution were taken from the constitution of New York of 1777, drawn by John Jay; that the word "officers" in the latter constitution is omitted in the Federal Constitution. If the New York constitution was intended to operate only on officers while in office, it is clear that the change in the words in the Federal Constitution by which "person" or "party" is substituted for "officer" was intended to give the power of impeachment wider scope and to cover the cases of those who had gone out of office after the commission of offenses as well as those who were in office at the time of impeachment.

The difference between the two Constitutions is thus shown:

New York constitution, 1777:	*Constitution of the United States:*
The power of impeaching all *officers* of the State for venal and corrupt conduct in their respective offices [shall] be vested in the *representatives of the people in assembly.* * * * No judgment of the said court shall be valid unless it shall be *assented to by two-thirds' part of the members then present*, &c.	The House of Representatives shall have the sole power of impeachment. * * * No *person* shall be convicted *without the concurrence of two-thirds of the members present.*

It is clear that it was "persons" who were to be convicted, and not "officers" *qua* officers, at the period of conviction; thus including ex-officers as well as incumbents of offices.

The framers of the Federal Constitution also took into view the impropriety of allowing the Vice-President to preside over the Senate during the trial of the President upon articles of impeachment, and so they provided that the Chief Justice of the Supreme Court should act as presiding officer of the Senate during such trial. In the interest of the accused, under the strong legal presumption of innocence, and to protect against passion, it is seen they required two-thirds of the members present in the Senate to convict. They knew, also, that such was the high authority claimed for the court of Parliament that the House of Commons, in the reign of Charles II, in the case of the Earl of Danby, insisted that no pardon under the great seal should be pleadable to an impeachment by the Commons of Great Britain, and this was finally enacted into statute law by 12 and 13 William III, chapter 2.

And so they provided that no pardon of the President should be either pleadable in cases of impeachment or operative after sentence.

They knew the unlimited power of the House of Lords to impose every kind of punishment upon the convicted, and remembering the extreme penalties which had been inflicted, and notably in the case of Lord Chancellor Bacon, who, notwithstanding his high dignity and great personal qualifications, on conviction had been fined £40,000, was ordered to be imprisoned in the tower during the king's pleasure, to be forever incapable of holding any office, place, or employment, and never again to sit in Parliament, or come within the verge of the court, they put a limitation on the judgment to be pronounced by the Senate, and put maximum bounds to its sentence in removal from office and disqualification in the future; but they left the courts of justice to vindicate the majesty of the law by indictment and criminal sentence as in other cases of infraction of the laws.

They were not ignorant that in England, although it was claimed that all subjects were liable to impeachment, yet in rare instances, as I said before, had the power been exerted in any case of offense which was not official crime or the breach of public trust; so they left impeachment where they found it in English practice and hedged about private persons with trial for crime by jury; and the people in the States amplified this protection by fuller and clearer guarantees to accused private persons by the fifth and sixth articles of the amendments to the Constitution. They knew that in England officers who had been guilty of offenses while in office were impeachable after they left office.

They had in mind that Lord Chancellor Somers had been impeached after he was out of office.

They surely were aware of the case of Lord Chancellor Macclesfield who in 1724 was in the zenith of his worldly success; yet they had seen that, shortly after the bursting of the South Sea bubble, the storm of indignation arose and he was compelled to resign his office. They knew full well that, after his resignation, in January, 1725, proceedings were originated in the House of Commons, and subsequently, after a strong speech from Sir George Oxenden, the Earl of Macclesfield was impeached. They had immediately before their eyes the case of Warren Hastings. They knew that he had left India in June, 1785, having surrendered the keys of office. He returned to England, where he was joyfully received by his friends.

On the 10th of May, 1786, Mr. Burke accused him at the bar of the House of Lords in the name of the Commons of England. Preliminary proceedings were conducted during the session of Parliament in 1787, and this case, as we have seen, was referred to on the 8th day of September, 1787, by Colonel Mason, when the clause relating to the removal of the President on impeachment and conviction for treason and bribery was under consideration in the convention, as will be seen by reference to the Madison Papers, volume 3, page 1528. He said, "Treason, as defined in the Constitution, will not reach many great and dangerous offenses. Hastings is not guilty of treason."

This case was thus fresh before them; and having placed several limitations on the matter of impeachment, they were silent on this important point, and made no question of the right to impeach a party guilty of official crime after he had ceased to be an officer. Besides, the objection of Mr. Pinckney, that the President ought not to be impeachable while in office is the only proposition for any limitation of the time when an offender was to be impeachable; and this is the very converse of the theory that he was impeachable after he had vacated his office.

Giving due weight to the adverse argument based on the expediency of trying a man for official crime after he is out of office and the danger of partisan impeachments, yet, under the sense of duty which impels me to decide this question judicially, I can come to no other conclusion than that, as there is no limitation to the punishment of crime except by express statutory enactment—and there is none in the Constitution as to the time when impeachments will lie—its framers meant, as Mr. Rawle has expressed it, that "persons liable to impeachment are those who 'are or have been in public office.'" And I adopt this language of John Quincy Adams, as quoted by Mr. Manager HOAR:

I hold, therefore, that every President of the United States, every Secretary of State, every officer impeachable by the laws of the country, is liable twenty years after his office expired as he is while he continues in office.

And this very doctrine will do as much as any one principle can to restore the purity of our Government and elevate the standard of official qualification.

The fourth section of the second article of the Constitution has, in my judgment, nothing whatever to do with the matter of jurisdiction in cases of impeachment. That had been granted already. On the contrary, this was a clause, absolutely mandatory in its character, for the removal of officers who were in office at the time of their impeachment and conviction. It was solely to accomplish the removal of the convicted officers; and this is clear from the fact that when it was first inserted in the Constitution (then limited as it was to the Chief Magistrate) it is called, as will be seen on page 1434 of the third volume Madison Papers, "the clause for the removal of the President on impeachment," &c.

It was a limitation upon the official term of a person who, as President, had been impeached and convicted of "treason, bribery, or other high crimes and misdemeanors," but not a limitation on the power of impeachment. It was inserted in the article of the Constitution defining the Executive department, as indicating how the official term of four years for the President could be cut short, and the insertion of "Vice-President and all civil officers of the United States" was an afterthought, in no way changing or modifying the purpose for which this clause was originally inserted in the Constitution. That purpose was to compel the Senate on impeachment and conviction of the "President, Vice-President and all civil officers of the United States," for treason, &c., to remove them. The language is, they "shall be removed from office."

The language is imperative; it leaves you no discretion; you cannot stop short of removal from office; you cannot exceed it.

The clause was inserted for this specific purpose; to accomplish nothing more; to leave you in such case power to do nothing less.

Much stress has been laid upon the case of Senator Blount, (Wharton's State Trials 200,) as establishing the doctrine that none but civil officers can be impeached, that is, persons in office at the time of impeachment; but I can draw no such conclusion from that case. All that was decided therein in point of law was that a Senator is not a civil officer of the United States and cannot be impeached. The party impeachable must have been an officer of the United States in reality, and, as a Senator is not an officer of the United States, he is no more liable to impeachment by the House of Representatives than any other officer of any of the States of the Union. A Senator for official crime or misconduct is liable to expulsion from the Senate, as was done in Blount's case; and that precedent was afterward followed in the expulsion of Mr. Smith, of Ohio, who was charged with being connected with the Burr conspiracy. The Constitution protects the people against the misconduct of Representatives or Senators by leaving to the respective Houses of Congress the parliamentary power of expulsion of their unworthy members.

In accordance with these views I do not deem it necessary to consider any question relating to the time or circumstances under which the resignation of the late Secretary of War was tendered or accepted, but considering him out of office on the 2d day of March, 1876, I hold that the Senate is bound under the Constitution to take jurisdiction of this case. The demurrer should be overruled, and going back to the first defect in the pleadings the plea should be overruled and the accused should be required to answer or plead further to the articles of impeachment.

Opinion of Mr. Mitchell,

Delivered May 22, 1876.

Mr. MITCHELL. Mr. President, the conclusions I have reached on the issue presented, by what is in substance and legal effect the plea of the respondent to the jurisdiction of the Senate, shall be stated briefly, and without unnecessary elaboration as to the reasons guiding me.

The Government of the United States is one of limited powers, the Constitution being the grant, consequently no exercise of any power upon the part of Congress, or either branch thereof, can be justified unless the authority for such exercise can be plainly traced either to some express grant in the Constitution, or to one necessarily implied from the terms of that instrument.

Before proceeding to an examination of the different clauses of the Constitution I will state that I do not deem it proper either to discuss or decide any of the many questions that have been suggested during the progress of this proceeding which are immaterial to the decision of the question now before this court. For instance, I do not feel called upon to answer, either publicly or in my own mind, as to the precise catalogue of offenses that are impeachable under our Constitution, nor whether a military officer may or may not be impeached, nor whether a person in office may be impeached for an offense committed prior to the time he took office, and when he was a private citizen, nor whether a person in office is impeachable for a high crime or misdemeanor committed prior to the time he entered upon that particular office, and while he was holding another office. The decision of these questions as well as many others that have been suggested and argued during this discussion is not absolutely essential to the determination of the issues now before the Senate, which stripped of all complication are simply and purely these:

First. Is the person, William W. Belknap, who has been a civil officer of the United States, but who is not now such officer, and was not at the inception of these proceedings, subject to impeachment for an impeachable offense committed while in such office, without regard to the question as to how he was disrobed of office, whether by resignation, removal, or expiration of his term?

Second. If he is not, then does the fact that he resigned to escape impeachment, or the fact that his resignation occurred on the same day that he was impeached, make any difference?

Should the former question be decided in the affirmative, then the latter also, and those incident to it, become immaterial. Striving therefore to keep steadily in view the precise questions before us, I will state briefly my conclusion, and the reasons that lead to it.

What are the powers conferred by the Constitution, either by express grant or by necessary implication, upon the House of Representatives to impeach and the Senate to try the person impeached? What is the nature and extent of the original grant, and what, if any, are the limitations or restrictions upon it?

In giving construction to the Constitution for the purpose of ascertaining the character and limits of any of its granted powers, all its provisions bearing upon the particular subject under consideration should be considered and construed together, and in such manner as to give legitimate effect to each part, and harmony to all.

Section 2 of article 1 of the Constitution provides, among other things, as follows:

> The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

I regard this as an express, distinct, positive, absolute, and unqualified grant of jurisdictional power to the House of Representatives to impeach. It is not, as has been suggested by the honorable Senator from Indiana [Mr. MORTON] and others, a mere assignment of the part the House is to act in the execution, jointly with the Senate, of a power granted elsewhere in the Constitution. It is not merely functional but jurisdictional; not directory as to manner of procedure, but substantive as to grant of power. It is itself the source of the power to impeach, and not merely a direction in the execution of such power. The grant is express, plenary, unqualified, unlimited, without any word of restraint save that of exclusiveness, and this of course does not operate upon the House of Representatives but rather upon every other Department and officer of Government and upon all private persons as well. "Shall have the *sole* power of impeachment;" that is to say no other Department, or branch, or officer of the Government, nor shall any private person exercise this power, but the House of Representatives shall have the power of impeachment. The first section of article 1 of the Constitution provides as follows:

> All legislative powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives.

Mark the language: not *all* legislative powers, not *all* the unlimited powers of legislation known to the English Parliament, but all legislative powers *herein granted*. The clause assumes that in subsequent parts of the Constitution there will be a separate grant, specific or by necessary implication, of the identical powers of legislation which it is provided by this clause shall be vested in "a Congress." Here then it may with propriety be said that this clause is not a jurisdictional grant of the various powers of legislation, but simply a designation of the depository that shall receive and exercise these powers, namely, a "Congress of the United States which shall consist of a Senate and House of Representatives." But compare with this the last clause of section 2 in article 1 relating to impeachment:

> The House of Representatives shall have the sole power of impeachment.

Is there any assumption here that further on in that instrument there is to be a separate grant, either expressly or by implication, of the powers of impeachment? Most certainly not. Is there anything in this language that would justify the construction that it is merely functional and not jurisdictional; that it was intended merely as a designation of a particular branch of the Government to perform one part in the proceedings of impeachment, the jurisdictional power of which was to be granted in a subsequent section? Clearly, to my mind, not. Had such been the intention of the framers of the Constitution, it seems to me they would have employed restrictive language similar to that used in the clause designating the repository of all legislative powers. They would have said, "The House of Representatives shall have the sole power of impeachment *herein granted*;" or, "All powers of impeachment *herein granted* shall be vested in the House of Representatives;" and so also in the clause relating to the trial of impeachments. If it had been the intention to simply designate a certain tribunal as the authority to execute certain powers otherwise and in another section specifically or by necessary implication granted, instead of saying "the Senate shall have the sole power to try all impeachments," they would have employed different language; they would have followed the precedent laid down in the first section of the first article, and said, "The sole power *herein granted* to try all impeachments shall be vested in the Senate;" or, "The Senate shall have the sole power *herein granted* to try all impeachments;" or, as in the clauses relating to executive and judicial power, they would, after designating the different arms of the Government that shall carry on the proceedings in impeachment, have proceeded to say, in the same connection, to what cases the impeachment power should extend, both as to person and offense.

But it is said the clause which in section 1 of article 2 declares that "the executive power shall be vested in a President of the United States of America" is in conflict with this argument and opposed to the construction I give to the clause in section 2 article 1 in reference to impeachment. Most assuredly not, for the simple reason that the Constitution, after declaring that "the executive power shall be vested in a President," proceeds in the very same breath, in the same article, in the appropriate place in that instrument, and under the proper head, to designate in specific terms what that power shall be. For instance, "Shall have power, by and with the advice and consent of the Senate, to make treaties, to nominate and appoint embassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not in the Constitution otherwise provided for; to fill up all vacancies that may happen during a recess of the Senate, to convene both Houses on extraordinary occasions, and in case of disagreement to adjourn them to such time as he shall think proper," &c. And so in reference to the clause in section 1, article 3, which declares that—

> The judicial power of the United States shall be vested in one Supreme Court.

Here again the framers of the Constitution proceed in the same article, in the appropriate place and under the proper head, to state to what cases the judicial power shall extend, and enumerate them at length. But where is the clause in the Constitution which declares that the powers of impeachment shall extend to certain cases, either as to person or offense? Suppose the Constitution had stopped in speaking of judicial power with the simple declaration that "the judicial power of the United States shall be vested in one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish," could it be contended that there was no grant of judicial power to the Government of the United States? Clearly not, and would not all admit in such a case that in determining what that power was we would look to the history of jurisprudence in England? And so in reference to the clause in section 2 of article 1 in reference to impeachment.

But suppose section 1, article 1, were all there was in that instrument on the subject of legislative power. It is clear no power of legislation whatever would have been granted to Congress, because that clause declares that "all legislative power *herein granted* shall be vested in a Congress of the United States." That clause, then, is a mere declaration of the particular branch or department of the Government that shall exercise all legislative power, and not a jurisdictional grant of the power itself. This clause is indeed functional and not jurisdictional, and in this it differs widely, in my judgment, from the clauses in sections 2 and 3 of article 1 in reference to impeachment, which I regard as jurisdictional, and which, in my opinion, are the only clauses in the Constitution that do confer jurisdiction in impeachment, if we may except that clause in paragraph 6 of section 3 of article 1, which reads: "When the President of the United States is tried, the Chief Justice shall preside," which clause I think may very properly be construed as a necessarily implied grant of power to impeach the President and thus enlarge in this respect the English parliamentary power of impeachment by extending it to the executive head of the Government, for in England the king could not be impeached. This would not be a forced or unreasonable construction of this clause. Still I incline to the opinion that without this clause, or that of section 4, article 2 of the Constitution, the President would be impeachable under the general grant of power by the House to

impeach and the Senate to try, from the fact that the reason for the exemption of the king from impeachment does not hold good as to the President, namely, "that the king can do no wrong." The President, unlike the king, has the power to do wrong, and unfortunately sometimes exercises that power. The more reasonable construction, therefore, to be given to the clause "when the President of the United States is tried, the Chief Justice shall preside" is, that it was not intended as a jurisdictional grant of power to impeach the President, but simply a recognition of such power previously granted with a provision as to the officer that should preside when he was impeached.

But what are we to understand by the phrase "power of impeachment?" The Constitution does not define it. The framers of that instrument did not in their wisdom think proper to specify by limits the extent, the height or depth or breadth or volume of this power. Whatever they understood that power to be, however, according to the usages of Parliament at the time they inserted this clause in the Constitution; whatever the people of the United States understood by this phrase when they, in order to form a more perfect Union, ordained and established the Constitution, whether wide enough to include the right to impeach any person whomsoever for any offense whatsoever against any law or rule of morals of the land, or so limited as to apply solely to civil officers of the Government while in office for offenses committed while in office, they granted it all to the House of Representatives, reserving no part of it to the States or to the people, vesting no portion of it anywhere else. Not the power of impeachment, however, that existed under the *lex Parliamenti* in 1376, when Richard Lyon was impeached for removing the staple of wool into France and loaning money at usurious rates; not the power necessarily that existed in the fourteenth or fifteenth nor yet in the sixteenth century; but the power of impeachment as it had become crystallized by usage as to impeachable offenses, persons impeachable and judgment on impeachment, in the latter part of the eighteenth century, at the date of the formation of our Constitution. This latter is the power of impeachment that was conferred upon the Government of the United States by the clauses in the first article of the Constitution. This was the power of impeachment it was intended should be exercised by this Government, save and except as it was limited or extended, if at all, either as to person, offense, or judgment, by subsequent provisions of the Constitution.

The Constitution, we are told, is "an instrument of enumeration, and not of definition," consequently the power is granted, while the definition of that power is left undefined: and while English history and English precedents confer no powers on our Federal Government, they are both invaluable as aids in defining the powers that are granted by the Constitution either expressly or by necessary implication. Impeachment had for centuries formed a part of the jurisprudence, if I may so speak, of the English government prior to the formation of our Constitution. The records of the British Parliament for a period of four hundred years were dotted with the history of impeachment trials that had taken place prior to that date. The power of impeachment as exercised in England and the settled usage of Parliament in this respect were then well understood by the statesmen of this country. They had been moulded into shape by the lapse of ages and crystallized into perfect form by an almost unbroken line of notable precedents. The dim, shadowy outlines of the parliamentary *lex non scripta* of the fourteenth century had become the well-defined parliamentary *lex scripta* of 1787. In fact, our Constitution was made in the full blaze of light, shed upon the subject by the impeachment of Warren Hastings, the governor-general of India, after his term of office had expired, for offenses committed while in office. The conclusion, therefore, is irresistible and logical that the men who framed our Constitution, the people who ordained and established it, used the terms "power of impeachment" in the sense in which these terms were at that time understood and used in the *lex Parliamenti* of England, and that they intended by the clause in the second article of the first section of the Constitution to make a full, absolute, express grant of this power in such sense to the House of Representatives, and the further unqualified, express grant of power to the Senate to try all such impeachments by the clause in the third section of the first article, which reads:

> The Senate shall have the sole power to try all impeachments.

What, then, was the true definition of the power of impeachment in the English parliamentary law at the time our Constitution was framed? For to this great defining power, the law and precedents of England—so often invoked by the highest judicial tribunal of our land—must we appeal for a definition of not only the power of impeachment, but of the persons impeachable. In this connection Mr. Rawle in his Commentaries on the Constitution, in speaking of impeachments, says:

> Impeachments are thus introduced as a known, definite term, and we must have recourse to the common law of England for a definition of them. (Rawle on Constitution, page 198.)

For the purposes of this case it may not be necessary to inquire into the full scope and extent of this definition. It is enough for us to know that according to the usage of Parliament it meant, generically, the prosecution by Parliament of any of the king's subjects for those offenses or "misdeeds" which, as stated by Mr. Wooddeson in his Law Lecture, volume 2, page 601, "peculiarly injure the commonwealth by the abuse of high offices of trust;" and although it is generally stated that at common law there is no limit as to the person or character of the offense, in other words, that "all the king's subjects are impeachable in Parliament," yet it is manifest to my mind that prior to the formation of our constitution the usage of the realm had so far limited the exercise of this power, if indeed any wider scope ever attached to it, as to make it apply solely to the prosecution of persons who either were or had been in office, for offenses committed while in office—in other words, for an offense as an officer, or while an officer of the Government, affecting the administration of public affairs.

And again, may it not with perfect propriety be claimed in the light of the English precedents that such has always been the full extent of the power of impeachment in England, and that the general declaration of the books to the effect that all the king's subjects are liable to impeachment should be construed to mean that all subjects who hold or have held office, and who have been guilty of any offense affecting public interests, disturbing the just administration of governmental affairs, are liable to impeachment? And applying the doctrine here, all private citizens are, in a certain sense, subject to impeachment, because all citizens may hold office and may commit impeachable offenses while in office. I must, therefore, not be understood as holding that all private persons are impeachable, but only such as have held office under the United States, and are chargeable with impeachable offenses committed while in office. As to whether the power extends to other than civil officers, it is not now necessary to determine. I am free to admit, however, that if any such limitation exists it is not by virtue of any restrictive provision of the Constitution itself upon the parliamentary power of impeachment, but is to be found in the restricted character of the parliamentary power itself, formed and fashioned by the usages of ages; and that such limitation did not exist in England I would by no means affirm, for I believe no military officer has been impeached for centuries in England, unless he was in some manner connected with the civil administration.

The records of the British Parliament through a history of many centuries, during which scores of impeachment trials occurred, fail to disclose, so far as we have been advised in the investigation of this case, a solitary case of impeachment except for official crime or breach of public trust. The grant, therefore, contained in the two clauses, "the House shall have the sole power of impeachment," and "the Senate shall have the sole power to try all impeachments," aside from any limitations that may be imposed by other parts of the Constitution, amounts in legal effect to this: That the House of Representatives shall have the power to impeach and the Senate to try all persons impeached for official crime; and by official crime I mean any offense possibly necessarily a high crime or misdemeanor affecting adversely the administration of public affairs, not of course necessarily only such offenses as are indictable either by statute or the common law. And upon this power, as we have seen in so far as this part of the Constitution is concerned, there is no limitation whatever, either as to the place where the offense is committed, the time when it is committed, or the status of the offender, either at the date of the impeachment or the time of trial or judgment. The power, therefore, of the House of Representatives to impeach and the Senate to try all persons for all official crime being plenary and unqualified, in virtue of the two clauses of the Constitution quoted, it follows that all persons now living who have at any time since the formation of our Government, while officers of the Government, been guilty of official crime, as I have defined these terms, are liable to impeachment by the House and trial by the Senate without regard to the question as to whether they have ceased to be such officers, unless indeed there are limitations upon this liability to be found in other portions of the Constitution.

Mr. Hamilton, in No. 65 of the Federalist, in speaking of impeachable offenses, says:

> The subjects of impeachment are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust.

What are these limitations, if any, relating to the character of the offense or the status of the offender, either upon the power of the House to impeach or the Senate to try? The third section of the first article of the Constitution, after prescribing certain rules of practice in cases of impeachment, provides first, that:

> No person shall be convicted without the concurrence of two-thirds of the members present.

But this is not a limitation upon the exercise of the power previously granted to impeach and try; it is simply a safeguard to the personal rights of the accused, a protection to him against what might possibly be a verdict influenced by high party feeling in a closely divided Senate in times of great party strife. The clause might have been made to read as follows: "No person shall be convicted without the concurrence of *all* the members present," and still the jurisdictional grant of power to the Senate in the first part of the same section would not have been diminished in the slightest degree. But the same section further provides that—

> Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Do these words either in whole or in part in any manner or to any extent limit the grant as to jurisdiction in the Senate to try all impeachments? Clearly they impose a limitation, but such limitation does not attach to the jurisdiction, but to that which follows after jurisdiction has attached. It affects the judgment, and that alone. It operates on that part of the proceeding in impeachment in such a manner as to not trench in the slightest degree on the question of jurisdiction. The Senate could comply literally with this provision in rendering judgment whether the party convicted was or was not in office at the time of impeachment, trial, and conviction. The clause is simply a limitation upon the power of the Senate in reference to the judgment it may pronounce; its language in effect is, "thus far shalt thou go and no farther." If the person convicted is in office at the date of the rendition of the judgment, and that is a civil office, you must remove him, and you may, in addition to this, add disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but beyond this limit you cannot go. If the person is in civil office he, under section 4 of article 2 of the Constitution, *must be removed*. If he is not in civil office then you may disqualify him for one day or a month or a year or five years or for the term of his natural life from holding and enjoying any office of honor, trust, or profit under the United States; but beyond this boundary of disability you cannot go. Under the common and parliamentary law of England there was no limit to the judgment the Peers might impose in cases of impeachment save that prescribed by the conscience and discretion of those pronouncing it, and the records of that bloody court show that during the past five hundred years these judgments ranged time and again, all through the whole catalogue of disability and punishment, from that of a mere censure to execution upon the block. This unlimited power in Parliament in the matter of judgment the framers of our Constitution in their wisdom thought should be restricted, and, while as to the persons who should be impeachable they left the matter where the common law and usages of Parliament left it, as to judgment they limited the power of the Senate by declaring that—

> Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

When, therefore, it is urged that, if we go to English history for a definition of the power of impeachment, we must take that definition in all its unlimited range as to the form and character of judgment, as well as to the persons impeachable; and when, for the purpose of casting the veil of derision upon the assumption here of a position supposed to involve this fatal absurdity, we are pointed, with an air of triumph, to the headless trunks, the pilloried forms, the separated quarters, of those who have fallen beneath the cruel judgments of impeachment in the English Parliament, it is enough that we should answer in the language of the framers of the Constitution, who, while they selected that which was good of English jurisprudence in the matter of impeachment and incorporated it into our fundamental charter, modified and corrected that which was evil in reference to judgment declared:

> Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

The power to disqualify from holding and enjoying office does not depend necessarily for its exercise upon the power to remove from office. The exercise of the one does not necessarily draw with it the exercise of the other. They are two separate and distinct disabilities or punishments, if they may be properly termed such, and not dependent in their infliction the one upon the other. They are not necessarily copulative. They may be disjunctive in application.

But it is said the fourth section of the second article of the Constitution has an important bearing upon the jurisdiction of this court, and while there is quite a diversity of opinion even among Senators who deny this jurisdiction as to the precise office of this section, it is asserted and seriously contended by able lawyers of the Senate that the *only* grant of power to the United States to impeach at all for any offense is one of *implication*, resulting from the language here used. It reads as follows:

> The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

It is said that, because this section declares that the President, Vice-President, and all civil officers of the United States shall, on impeachment for certain specified offenses, be removed from office, it raises a necessary implication, an implied grant of power to the Federal Government to be exercised through the House and Senate to impeach and try such officers for the specified offenses, and that this is the *sole* jurisdictional grant on this subject. This I cannot agree to.

It is contended furthermore that the sole purpose of impeachment is removal from office, and that, therefore, this clause of the Constitution limits the jurisdiction of this Government as to persons in cases of impeachment to civil officers of the United States while in office. It is difficult of comprehension how it can, with any plausibility, be contended that the sole purpose of impeachment is removal from office, when the Constitution in terms vests in the discretion of the Senate the power to impose upon the convicted party an infliction other than removal from office, and one, too, more terrible in its character; a punishment in comparison with which fine, imprisonment, the pillory, and may we not with propriety say death itself, would seem to be preferable. For an American citizen, who has been honored by elevation to high office, who has stood in the temple of official power, whose sword has been drawn in patriotism and wielded with honor in defense of his country, whose ambition may have led him to grasp still higher at the reins of government, to be denuded by the American Senate, in the presence of over forty millions of people, of all the rights of an American citizen, in so far as they relate to the right to hold and enjoy any office of either honor, trust, or profit under the United States, is, it occurs to me, to suffer upon his part a humiliation, a punishment if you please, which nothing save the security of the rights of the whole people, the integrity of the nation, and an honest and just administration of public affairs would seem to justify.

The sole object of impeachment therefore is *not* merely removal from office; and while the purpose is not so much the punishment of the offender as the protection of the Government and the people against the venality of dishonest men in office, still the framers of the Constitution evidently regarded the deprivation from holding and enjoying office under the United States equally important to the ends of justice, the correct administration of public affairs, and the general welfare of the Republic, with that of the removal from office of a dishonest man. But, notwithstanding the enormity of this penalty, which in one sense seems to be little else than punishment, it is not after all any punishment within the meaning of that term as used in criminal jurisprudence. Legal punishment in the administration of criminal law is that which in some way, either to a small or large extent, affects the life, liberty, or property of the citizen; and this does neither. It operates exclusively upon his political rights, and no deprivation of political rights of the citizen in our Government is ever inflicted as a punishment of the offender, but solely as a means of protection to the State. The framers of the Constitution did not regard it in the nature of a punishment, and they therefore provided that—

> The party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law.

As stated by Mr. Justice Story—

> It is not so much designed to punish an offender as to secure the State against gross official misdemeanors. It touches neither his person nor his property, but simply divests him of his political capacity.

The third section of article 1 of the Constitution, as we have seen, vests a discretion in the Senate within certain limits as to the extent of the punishment to be inflicted. This discretion is not taken away by the fourth section of the second article. The object doubtless of this section was not to confer jurisdiction nor yet to limit that jurisdiction already granted in a former section, but rather to limit the tenure of office; not to impose a limitation upon the power of the court in reference to judgment, but rather to make imperative one part of the judgment to be pronounced in a case where the offender is in civil office at the time of trial and conviction; that is to say, that he shall in such a case be removed from office.

Again, the terms "civil officers," as used in the fourth section of the second article, neither add to nor take from the scope of the jurisdiction of grant in the second and third sections of the first article. The power of impeachment we have seen granted in the clauses, "the House shall have the sole power of impeachment" and "the Senate shall have the sole power to try all impeachments," is limited to prosecution for official crime; that is to say, for offenses committed while in office affecting public matters. Therefore, all persons who could be impeached under our Constitution, even although the fourth section of the second article were stricken from its provisions, must be or have been officers of the Government, and must be charged with offenses committed while in office affecting the just administration of public affairs.

The honorable Senator from Wisconsin says, in substance, if the second section of the first article gives jurisdiction then the fourth section of the second article has no office; it is useless; its insertion in the Constitution was upon the part of the framers *mal entendre*. The answer to this, however, is that without this section the vilest criminal in the highest office of the land, impeached by the House and convicted by the Senate of crimes dangerous in the extreme to the well-being of the Government, might, through a false sentiment of pity or error in judgment of one more than one-third of the members present when judgment is pronounced, retain possession of his office.

The fourth section, therefore, of the second article performs in this respect a high function in disrobing the Senate of all discretion, and compelling, *ipso jure*, removal from office.

The particular location in the Constitution of the fourth section of the second article should, it seems to me, receive consideration in giving construction to its purpose. If we hold that this clause is jurisdictional, if it is a definition of the powers of impeachment, if it is a limitation upon the persons subject to impeachment, or the offenses for which impeachment will lie, then indeed must we agree with Mr. Justice Story in saying:

> By some strange inadvertence this part of the Constitution has been taken from its natural connection, and with no great propriety ranged under the head which embraces the organization and rights and duties of the executive department. (Story's Commentaries, volume 1, § 788.)

If, however, we regard it not as conferring jurisdiction, not as limiting the power of impeachment either as to person, offense, or judg-

ment, but simply as a limitation upon the tenure of office in the case of a person in civil office convicted of some offense included in the designation "treason, bribery, or other high crimes and misdemeanors," then we are at once constrained to say that no more appropriate place could have been found for its insertion in our fundamental law. Had it been intended by this clause to confer jurisdiction or limit the power of jurisdiction, either as to persons, offenses, or judgment, why not, as in the case of the article conferring and limiting judicial power, have inserted it under the appropriate head of the grant of legislative powers in proximity with the clause—

The House shall have the sole power of impeachment.

The fact that it appears under the general head of matters relating to the executive department of the Government, placed there in this model production of the century by men so eminent for appropriateness, style, and arrangement as were its framers, is an item not to be overlooked in giving construction to its language. I hold, therefore, that section 4 of article 2 is in none of its features repugnant to the general grant of power in article 1; but that it is in all its parts harmonious and consistent with all former clauses of the Constitution relating to the subject of impeachment; it is in no sense a jurisdictional grant of power either expressly or by implication, nor is it a limitation upon the power before granted either as to persons impeachable, the offenses for which they may be impeached, or the judgment to be rendered; that its meaning is, in short, simply this, nothing more, that in all cases of impeachment of a person who is a civil officer at the time of trial and conviction for any offense included in the designation "treason, bribery, or other high crimes and misdemeanors," the persons so convicted shall be removed from office; and if, under the common law and by parliamentary usage, as it existed at the formation of our Constitution, any other persons than civil officers in office could be impeached for any offenses, whether included or not in the catalogue, "treason, bribery, or other high crimes and misdemeanors;" or if, under that law and usage, civil officers could be impeached for any offense not included in that catalogue or designation of offenses—and these are questions I do not decide—that then all such persons as to such offenses can be impeached under our Constitution irrespective of section 4, article 2, and just as though such section were not in the Constitution.

But it is asserted by some who deny jurisdiction in the case at bar, with an air almost akin to defiance, that the universal current of opinion of American commentators is to the effect that impeachment would not lie against a person not in a civil office of the United States at the time. And especially is the commentator Story relied upon as conclusive on the question. To this assumption, and in opposition to it, I refer to Rawle on the Constitution, section 801, in which he uses this language:

From the reasons already given it is obvious that the only persons liable to impeachment are those who are *or have been* in public office.

Is it conceded by those denying jurisdiction in this case that this indeed is an exception? that here in truth is one American commentator of ability as a writer on constitutional law who holds and states the opinion unqualifiedly that persons who have been in public office as well as persons who are in public office are liable to impeachment? I do not understand this concession to have been made by any either of the learned counsel for the defense or the able Senators who have argued against this jurisdiction. On the contrary, it is contended with earnestness that Mr. Rawle, in the language quoted, did not mean to assert that a person not in office, but who had been, could be impeached. And in this attempt to show that he did not mean this, but did mean something else, the reasons given are diverse and sadly in antagonism with certain other positions taken by advocates on that side of the question. One of the honorable counsel for the defense, Mr. Carpenter, in referring to this clause, disposes of it in this cursory manner:

Three words, "or have been," are all they claim any comfort from in this passage from Rawle—an instance of the caution of a writer in laying down a general proposition to throw in here and there qualifications which may or may not exist.

An argument based upon the limited number of words in which the capability of a writer on constitutional law may enable him to state his conclusions is one hardly calculated to add to the professional fame of such eminent counsel when used in such an important proceeding as this. The question is, what do the words actually used mean, without regard to the number of words employed by the learned commentator.

But it is contended by others, the honorable Senator from New Jersey, [Mr. FRELINGHUYSEN,] the honorable Senator from New York, [Mr. CONKLING,] and the honorable Senator from Wisconsin, [Mr. HOWE,] and perhaps others, that what Mr. Rawle meant to be understood as saying by this language, and what he did in effect say, is this: That from the reasons which had preceded it was obvious that there were but two classes of opinion extant in reference to the persons that could be impeached, the one being to the effect that those holding civil public office were liable, and the other, which included both, namely, those "who are or have been in public office." It seems to me, from a careful reading of the clause, giving to each word its legitimate office, it may with much propriety be said that it is obvious that such a construction is illogical, unwarranted, and unsound; besides, Judge Story, upon whose statements so much stress is laid in opposition to this jurisdiction, cites Mr. Rawle as one commentator who held to the doctrine that those who have been, as well as those who are, in public office are liable to impeachment. In referring to this language of Mr. Rawle, Judge Story, section 801, uses this language:

A learned commentator seems to have taken it for granted that the liability to impeachment extends to all who have been, as well as to all who are, in public office.

In the opinion, therefore, of Justice Story, Mr. Rawle, so far from failing to commit himself upon the question, and so far from merely stating the two classes of opinions that prevailed, and which alone for obvious reasons could by any possibility obtain in reference to this subject, had employed such language as showed that he had taken it for granted "that the liability to impeachment extends to all who have been, as well as to all who are, in public office."

It must be conceded, therefore, willingly or otherwise, for whatever it is worth, that Mr. Rawle, in his Commentaries on the Constitution, asserted the doctrine unqualifiedly—and he was a strict constructionist—that under the Constitution all persons who have been, as well as all who are, in public office are liable to impeachment for impeachable offenses committed while in office. And can it be said, even after all that is claimed from Judge Story's opinion on this subject, that he (Story) joins issue with Mr. Rawle in this opinion? Will it be contended in the face of what I am about to quote from Mr. Story that he ever at any time asserted that the contrary of what Mr. Rawle stated was the true doctrine? Most certainly not.

After referring to the several clauses of the Constitution bearing upon the subject of impeachment, and after stating in reference to one clause that so and so appears to be the case, and in reference to another that "it would seem to follow" that so and so were true, he, Judge Story, concludes and dismisses the whole subject in section 805 in these words:

It is not intended to express any opinion in these commentaries as to which is the true exposition of the Constitution on the points above cited. They are brought before the learned reader as matters still *sub judice*, the final decision of which may be reasonably left to the high tribunal constituting the court of impeachment when the occasion shall arise.

Justice Story, therefore, does not decide the question; he does, if we may take him at his own word, not even so much as "express any opinion" in his commentaries "as to which is the true exposition of the Constitution" in reference to the very questions which to-day separate in opinion and judgment the members of this Senate. On the contrary, he, unlike Rawle, who decided the controversy, simply brings it "before the learned reader as a matter still *sub judice*, still under consideration, and one which in his judgment should be reasonably left to this high tribunal for final decision when the occasion might arise. That occasion has at last arisen, and here and now the great question must be forever settled. For nearly a century it has been *sub judice* by American commentators and the American bar; diverse opinions have been held and expressed, it is true, and now it is for the first time before the proper tribunal for adjudication. What has been *sub judice* for nearly one hundred years must for all future time be *res judicata*.

It has been suggested that if the impeachment by the House had taken place prior to the act of resignation, that then the case would be different, upon the principle that, jurisdiction having attached, the Senate could proceed to try. The view I take of the Constitution renders it unnecessary that I should pass upon this question. I cannot conceive, however, that it would make the slightest difference in any possible view of the case in so far as the jurisdiction of the Senate to try is concerned.

If the construction contended for by those who deny this jurisdiction is correct; if to confer jurisdiction the accused must be a civil officer; if the sole purpose of impeachment is removal from office; and if no judgment in impeachment can be rendered except there is included in it, and as a part of it, removal from office, then it follows as a legal and logical sequence that a resignation even after the conclusion of the trial, and before judgment pronounced, would oust the jurisdiction of the Senate, prevent any judgment whatever from being rendered, the whole proceeding would abate, the accused though perhaps covered with the infamy of his crime would go forth a free man with the right, provided he could through a repetition of his crime, or otherwise, command the power to receive a new commission the next day, only to be surrendered perhaps after another trial by impeachment in time to again defeat the judgment of the Senate. Any construction, however, of our fundamental law that would make such a course possible; that would make the whole constitutional power of impeachment liable to suspension at the will of the accused criminal; that would, as it unquestionably does in effect, practically destroy this protection to the Government against the evil practices of dishonest men who are in office and of others who have been and may be again, is to my mind unreasonable, illogical, dangerous to the best interests of the Government, and unwarranted either by its letter or spirit.

The fact that the Constitution empowers the Senate to disqualify, as well as remove from office, would, it seems, be a perfect answer to the assumption that the sole purpose of impeachment is the removal from office. To prevent, therefore, in the discretion of the Senate, a return to office of one who had proved unworthy while in office, to the extent of committing an impeachable offense, was evidently regarded as a means of protection to public liberty, so necessary to the guardianship of the high interests of the State as to secure for it a place in explicit terms in our fundamental law. To place

upon the Constitution, therefore, such construction as would make it possible for a great public offender, by the simple voluntary act of resignation, to evade this part of the penalty, and thus trample, unchecked and defiantly, upon one of the great constitutional protections with which the rights and liberties of the whole people are surrounded, is, it seems to me, to cast a libel upon the wisdom, the intelligence, the legal learning of the men who made the Constitution.

While to the President was given the power to grant reprieves and pardons for offenses against the United States, an exception was made in cases of impeachment. This is the "unpardonable sin" of the Constitution. So dangerous was the commission of an impeachable offense regarded by the framers of the Constitution to the vitality and purity of the life of our body-politic, that the offender is placed forever beyond the reach of restoration through executive clemency; and yet will it be said that the criminal himself, after polluting the official robe and tainting the public virtue by his own official crime, can evade the penalties of the Constitution and batter down the safeguards of the nation by quietly surrendering his office? Can he thus pardon his own offense before conviction? I cannot accept a construction so fatal in its results to the very existence of the power of impeachment incorporated in the Constitution.

I am clear, therefore, in my conviction that the true theory of the Constitution in respect of the power of impeachment was declared by Ex-President John Quincy Adams in the national House of Representatives in 1846, when in speaking of this power he used the following language:

> And here I take occasion to say I differ from gentlemen who have stated that the day of impeachment has passed by the Constitution from the moment the public office expires. I hold no such doctrine; I hold myself, so long as I have the breath of life in my body, amenable to impeachment by this House for anything I did during the time I held any public office.

And when interrupted by Mr. Bailey, of Virginia, with a criticism in the shape of the following interrogatory: "Is not the judgment in case of impeachment removal from office?" The old man eloquent, the veteran statesman of four score years, responded as follows:

> And disqualification to hold any office of honor, trust, or profit under the United States forever afterward; a punishment much greater in my opinion than removal from office. It clings to a man as long as he lives; and if any public officer ever put himself in a position to be tried by impeachment, he would have very little of my good opinion if he did not think disqualification from holding office for life a more severe punishment than mere removal from office. I hold, therefore, that every President of the United States, every Secretary of State, every officer impeachable by the laws of the country is as liable twenty years after his office expired as he is while he continues in office.—*Congressional Globe*, April 13, 1846.

But it is said if in this case the Senate should take jurisdiction it opens a door so wide that ex-officials who have years ago retired from office will be dragged from their homes in private life and placed upon trial before a political tribunal for alleged official offenses; that it will establish a rule of construction for the several States that may operate practically in the same way, to the detriment of the administration of public justice and the deprivation of private rights. As a preventive against abuse in this direction may we not with perfect composure rely upon that sense of justice and propriety which must be presumed to exist at all times and under all circumstances, whether under one administration or another, in the national House of Representatives and in the houses of representatives of the several States. May we not with perfect confidence trust to their sound discretion for protection against proceedings by impeachment for offenses that are venial in their character, and those that have been condoned by the lapse of time or pardoned *sub silentio* by a generous people. The fact that in our whole history of nearly one hundred years since the adoption of the Constitution there have been but six impeachments of persons *in office*, would seem to warrant the conclusion that no abuse of this great power will be indulged in hereafter by any succeeding House of Representatives.

Holding, therefore, to these views as to the nature and extent of the power of this Government in the matter of impeachment, it follows that the plea of the respondent to the jurisdiction of the Senate must be overruled, and he cited to answer to the merits of the articles of impeachment.

Opinion of Mr. Morrill, of Vermont.

Delivered May 24, 1876.

Mr. MORRILL, of Vermont. Mr. President, I shall make no attempt to present an argument here, but merely to give very briefly the conclusions, with some reasons therefor, which I have arrived at after as impartial a consideration of the grave questions involved as I have been able to bestow. I am not eager to convince others, and if I were, I know of no one eager to be convinced. If the cabinet of Mr. Pitt differed both about the impeachment of Warren Hastings and about dropping the impeachment as a question of policy, it is not strange that Senators should differ here about the impeachment of the late Secretary of War as a question of power. I shall claim no more charity for my own opinion than I cheerfully concede to that of others.

As often repeated as they have been, I can hardly make myself understood without reciting all of the words relating to impeachment contained in the Constitution:

> The House of Representatives * * * shall have the sole power of impeachment. (Article 1, section 2.)
>
> The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present. (Article 1, section 3.)
>
> Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law. (Article 1, section 3.)
>
> The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. (Article 2, section 4.)
>
> The President * * * shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. (Article 2, section 2.)
>
> The trial of all crimes, except in cases of impeachment, shall be by jury. (Article 3, section 2.)

These embrace all there is upon the subject. It must in all fairness be conceded that these provisions should be construed to mean no more and no less than the words employed conveyed at the time in the country from which they were borrowed, except so far as the provisions themselves were directly modified and restrained. If for no other purpose, the common law may be resorted to at least to obtain the real significance of the legal terms used in the Constitution, and with as much authority as the English classics may be for the correct usage of other words in our language. Even conceding that the common law gives no additional constitutional power, it will yet interpose against an erroneous definition or any curtailment of the meaning of its phrases.

The case before us arises upon the presentation by the House of Representatives of articles of impeachment against General William W. Belknap, late Secretary of War, who pleads that he resigned his office a short time before and on the same day the articles were moved in the House, and therefore is not liable to impeachment. Under the apt and thoroughly defined phrases of the Constitution, and under the circumstances as stated, the question pending is: Has the Senate jurisdiction?

At this point, the question as to the guilt or innocence of the respondent is in no way concerned, and therefore the limitations as to the final judgment of this court, or the consequences which may follow, are not matters for our present consideration. Nor does it affect the case at this or any other stage that he may be tried and punished in the criminal court according to law. That is an incident which may follow any and all impeachments. It may be more important, however, that we should preserve the Constitution in that full but unexaggerated force and in that entire symmetry with which it left the hands of the original framers, and a refusal by the Senate to exercise powers actually conferred, if they have been conferred, denying the right of the House to impeach an officer who has resigned, would go far toward establishing a precedent that might practically destroy the efficacy of all future impeachments, and that in cases possibly much more flagrant and important than the one now presented. Is this to be the last case to appear in our history? Are we to make a breach in the Constitution for the noiseless retreat of a whole class of the greatest official criminals?

As it seems to me, from a common-sense view—and I speak with much diffidence—the points most deserving attention are:

First, has the House of Representatives the power to impeach?

Second, has the Senate the power to try impeachments?

Third, is the identity of the person proposed to be impeached by the House of Representatives established?

Fourth, is the offense charged in the articles of impeachment an impeachable offense?

Upon these points there is no doubt suggested in any quarter, and they must all be answered affirmatively.

The next point in the case presents the only difficulty; that is to say:

Fifth, is the late Secretary of War, having resigned, now impeachable?

There is no misdescription of the person charged, no imputed or fatal blunder as to the forms of procedure by the prosecutors, and no doubt that the case is before the proper tribunal; but the narrow question still remains unanswered: Is the late Secretary of War entitled to escape all the perils of impeachment by his swift resignation? Can he solely by his own act defeat our jurisdiction? Or, if convicted, will his voluntary removal from office necessarily relieve him from any further penalty? The penalty, if convicted, could not be less than removal from office and might be much more. Disqualification for all future time might follow conviction, if a judgment so severe should be held to be merited; but there can be no conviction whatever if the guilty party can, as soon as he quits office by resignation or otherwise, escape jurisdiction. If the Constitution is to be interpreted so as to give meaning and scope to all its parts, if we are not by our decision of this case to virtually wipe out forever the whole power of impeachment or to transform it into a barking power that is never to bite, it must be held, as it appears to me, that the words "all civil officers of the United States," even if held to be jurisdictional, which is at least doubtful, cover those who have as such committed impeachable offenses whether in office or not at the moment of impeachment, and, if in office, they must be removed. This interpretation would certainly appear to be entirely just, entraps no

innocent man, shields no guilty man, and is, so far as I know, in harmony with all the ideas of impeachment current at the date of the adoption of the Constitution and exactly correspondent with the language of our earliest as well as of the latest penal statutes, including the revised code, which are held to make officers accountable for their misdeeds though they may have ceased to hold any office. If by resigning a guilty civil officer may escape impeachment, the same door is open for escape from a criminal indictment.

It is not now contended anywhere that a private citizen, however guilty of high crimes, while holding no office under the United States, is liable to impeachment; and now if an officer guilty of high crimes may by resignation of his office escape, as has been contended, then neither private citizens nor officers, except at their own will, can be hereafter subjected to impeachment. The Constitution has no more surely furnished an excuse for the former than the latter will surely furnish for themselves. And thus the great remedy of impeachment "for treason, bribery, and other high crimes and misdemeanors" of all United States civil officers, so industriously planted in so many different places of the Constitution, would be torn out by the roots and thrown like a worthless weed away. All of the carefully adjusted machinery about a conviction by not less than two-thirds of the Senators present and on oath, about a further trial and punishment according to law, about removal from office and disqualification to hold and enjoy any office, becomes almost a mockery in the face of the unedited proviso which the counsel for the responent now in effect ask us to affix thereto, namely:

Provided, That the Senate shall not entertain jurisdiction in the case of any civil officer against whom articles of impeachment may be presented if he shall promptly, or at any time, tender a resignation before final judgment.

If the framers of the Constitution had only ingrafted thereon such a proviso, it would have superseded the necessity of all other safeguards against extreme penalties upon the accused, and saved much labored commentary. The pardoning power of the President in all cases of impeachment was taken away; but if resignation snatches away all jurisdiction, then a power, too great to be intrusted to the President, was taken away only to be given to the party impeached, from whom the power to resign was not taken away.

No very substantial reason has been offered why official treason, bribery, and other high crimes and misdemeanors should be outlawed at the end of an official term or by a resignation. Debts and petty crimes are very properly subjected to some limitation; but a crime of such magnitude as to be worthy of a trial by this court ought not, as it appears to me, to be subject to the plenary indulgence of a statute of limitations, or to a day of jubilee. There is no limitation in the Constitution upon this subject whatever; none has been cited under English precedents; and no attempt at limitation by statute laws to patch the Constitution, even if the power had been given to patch, is likely ever to be proposed; and it would seem to be a matter of too great importance to be interjected into the Constitution at this late day by construction or by a refusal to try a case because it was begun two hours too late.

If it be said that, by assuming jurisdiction in a case like the present, a door will be left ajar by which partisan oppression and abuse will ultimately creep into and pollute our history by great examples of judicial tyranny, it is to be observed that all granted powers are open to the same objection—those conferred upon the President, or upon the judiciary, or upon Congress; and no power granted has been more carefully guarded than the power of impeachment. The risk of abuse through a popular government is no greater when exercising the power of impeachment than in many other directions. To distrust it here is to distrust it everywhere. A jury of twelve men is trusted in any part of the country to try the most momentous issues among men of life and fortune; and can it be imagined that the Senate of the United States, composed of men supposed in some degree to represent the virtues and dignity, the intelligence and discretion, of thirty-eight States, is a tribunal unfit to be trusted to try issues of fact upon which the power ever again to hold office on the part of the convicted party must be the utmost limit of their verdict?

The honor and conscience of the Senate will not permit this trial to degenerate into argumentation merely for victory on the part of any of its members, nor should the Senate be less free than the House of Representatives has been from the imputation of a division on the line of political sentiment in the determination of a vital question of constitutional law. It is to be decided impartially, each Senator for himself alone, whether the decision clashes with that of any others or not, and, if decided rightly, no one need care.

The speculations of learned men upon different sides have been industriously cited, and the weight of such authority to guide us has no such preponderance as to entitle it to control our judgment in this the first case practically arising for our decision. The unanimous opinion of the House of Representatives in favor of jurisdiction cannot be wholly set aside as of no value. The popular branch of the Government has an interest as deep and abiding in the true interpretation of the powers relating to impeachment, whatever may be the present political creed of the majority, as the Senate itself, and it cannot be supposed that it has now or ever can have any motive for a latitudinarian construction of the Constitution on this subject.

We have jurisdiction most assuredly for offenses committed by civil officers. The question as to any other officers is not now before us. To say that a person might be a civil officer for all the purposes of committing the offense and then in a moment after not be for the purposes of trial and conviction would be, if I may be allowed to say so, a stupendous assumption unwarranted by any attribute of common sense. In plain English, and not encumbered by the dust and mold of antiquated authority, nor by the thick embroidery of later impassioned rhetoric, the words "civil officers" must be held to mean civil officers at the time of committing the offense. The remedy reaches these from the highest to the lowest, and upon conviction judgment is not confined to removal from office, that being the very smallest part of the remedy. This is not a strained view of the law and presents no terrors save to those guilty of high crimes and misdemeanors in office. The people have a right to this remedy unabridged.

The alternative presented looks to me far more formidable, and that is, to leave all officers of the United States at liberty to burrow in corruption, to betray the honor and the highest interests of their country, to sell justice, to accept bribes, to embezzle the public funds, and then, after destroying the records of guilt, if that be possible, and suborning the witnesses through their ill-gotten gains, they can resign and defy all the remedies provided through the dead forms of impeachment. That would be "played out," as a red-handed murderer in New York recently said about hanging. I cannot believe in any construction of the Constitution that will leave it in so crippled a condition and so absolutely at the mercy of those against whom its sharpest provisions are pointed and who may be the very chiefest of offenders.

The doctrine of resignation and avoidance, so far as I am able to comprehend it, fritters away all the power there is of real substance in the Constitution relating to impeachments, and, if it shall prevail, the torn shreds of that power will hang dangling in the air as a mere scare-crow, but scaring nobody.

Upon one side of the argument it is claimed that there is great danger in permitting trials by impeachment for offenses committed while in office after the person no longer holds office; but is it not clear that a person out of office will be most unlikely to excite the undeserved animosity and vengeance of, or be pursued by, any great party in the plenitude of its power or when holding the majority required for a successful impeachment in both Houses of Congress. If this is not wholly an imaginary danger it would seem to be set at rest by the fact that no such merely politically-malicious prosecution, even in times of the greatest party heat, has ever occurred. And this fact by no means shows, as has been contended, that the power to prosecute officers after they have laid down their offices does not exist and is not ready on any proper occasion to be called forth in full vigor. A long period has elapsed since any declaration of war has been made by Congress, and yet it will not be said that Congress has not the power to declare war. The non-use of a power does not abrogate it, nor necessarily even make it obsolete, but rather tends to show that it is not liable to abuse.

Upon the other side it is intimated that a person actually in office may be impeached for offenses prior even to his acceptance of office. Would not that be the most dangerous doctrine which could under any circumstances be established? Offenses which the people had forgiven by popular election, offenses of youth fully condoned by years of exemplary life, might be dragged forth by partisan hatred and malignity in order to drive persons from office and give the spoils to the victors. I cannot be mistaken in the belief that this is more than an imaginary danger.

I have thus frankly given my own opinions without attempting to answer those just as sincerely entertained by others. In the present case, those who deny jurisdiction generally appear to occupy the ground that officers may be impeached for offenses committed as private citizens, but that we may not impeach private citizens for offenses committed as officers. To me the logic of the Constitution indicates precisely the reverse. To hold otherwise will place the heavy responsibility upon the present Senate of cutting down the much-dreaded constitutional power of impeachment for corruption in office to the insignificant proportions of merely removal from office, and that to be obtained by the cowardly and conscience-stricken resignations of the offenders. That is a responsibility which, for one, I am not ready to assume. We are responding to a prosecution begun by the House of Representatives in the name of all the people of the United States, and it cannot be evaded as a gusty and unmeaning formula, but must be treated as one of the weightiest matters which can arise under our form of Government, not to be overcome by hair-splitting objections, sometimes resorted to in pleas of abatement, and which have no relation to the merits of procedure or the merits of the case on trial.

I conclude by reiterating my previous statement that the words "all civil officers of the United States" must be construed to cover those who have, as such officers, committed impeachable offenses, whether in office or not at the moment of impeachment. Without such a construction the potent remedy of impeachment under the Constitution for official corruption will hereafter become extinct, and its downfall will bear the date of 1876.

Sincerely entertaining these views, I must vote in the direction to which they point.

Opinion of Mr. Eaton.

Delivered May 24, 1876.

Mr. EATON. I should have contented myself with a silent vote upon the matter now before the Senate, were I not in a position antagonistic in opinion to distinguished Senators whose lead in all general legislative business I am most pleased to follow. But sitting here as a judge, to pass upon a great constitutional question, involving the construction of the organic law, on a point where the rights of a citizen are to be determined, ay sir, the rights of all citizens who may have held or shall hereafter hold civil or military or naval office under the Government of the United States, I should be false to myself, false to those principles which have ever governed my public life, if I hesitated to announce the reasons which control my action. The Constitution of the United States is an instrument of delegated powers, delegated by the people of the several States, and its provisions are to be construed strictly. We are to take the instrument as it is, not as we would have it. We are not constitution-makers, but the servants of the makers, the *people of the States*. If the instrument is faulty, let it be amended in such particular according to its terms, and not force a construction to meet the requirements of a present contingency.

Senators have gravely said "that the great men, the fathers who framed the Constitution, were wise men, men who would not have so stultified themselves as to have given to their posterity an instrument which could be defeated by the very act of a delinquent officer." Such language can have no power or influence upon my mind; it begs the issue, and to it I attach no importance.

The question is, what did the fathers do? Not whether they were wise or unwise; not whether the convention which formed the Constitution might not in many particulars have performed better work.

Every Senator knows, it is a matter of history, that the Federal Constitution would not have been adopted as it came from the hands of the framers by several of the States; and many amendments were demanded before a people jealous of their rights would submit to its government.

Therefore I say that the question of the wisdom or unwisdom of the framers of the Constitution is unworthy the consideration of this tribunal, and will not be entertained in its deliberations. By the terms of the Constitution has the Senate jurisdiction of the matter now pressed upon its consideration by the House of Representatives?

Can a private citizen be tried by this body under articles of impeachment alleging criminal conduct of said citizen at a time when he was in the enjoyment of a Federal office?

This is the sole question, and into it must not be interjected other and extraneous matter; not the time when the delinquent officer resigned nor the reasons which impelled him to a resignation; with all that we have nothing to do. Have we the power to try a private citizen? It is not to be denied that as the House of Representatives has the power of impeachment, so the Senate is the only body or tribunal possessing the power to try; but if the House exercises its power wrongfully, no jurisdiction is conferred thereby on this body, and the Senate should at once assert its independence and dismiss the articles of impeachment. Can a private citizen, then, be impeached by the House of Representatives and tried by the Senate for criminal acts done and performed during the time that said citizen held an office under the Federal Government?

It may be said there are no precedents to govern, assist, or enlighten us, and that in this case the Senate of the United States will establish a precedent for all the coming years. I pray it may be a wise one, one which will be respected by the future Senates who may be called to pass upon questions of a like character. There are, however, two precedents which have great weight with me, and to which I shall hereafter direct the attention of Senators, to wit, the Blount case and the action of the convention which formed the present constitution of the State of New Jersey.

But, sir, Senators have succeeded in finding English precedents by the score. I desire to say that in the consideration of this grave and important constitutional question English precedents will have no controlling power over my mind, and I thank God for what I believe to be true, that English precedents in this particular had no governing weight in the minds of the men who framed the Constitution, men who for years had suffered under the tyranny of that very House of Lords whose judgments are now invoked as precedents to govern a Senate of the United States in the decision of a question resting solely upon the provisions of the Constitution!

I am amazed, sir, absolutely amazed, that Senators for whose opinions I confess to have entertained entire confidence should seek the parliamentary law of Great Britain to solve a question arising under that written instrument which itself is the *supreme law* of the land! And, sir, we are gravely told by distinguished Senators, that the modes of procedure adopted by the Parliament of Great Britain in cases of impeachment must have governing power in the deliberations of this Senate upon a grave and important question. Sir, for one, perhaps the least in consequence of the members of this Senate, I deny it; as a citizen of the United States, I deny it; as a humble member of that great and patriotic party—and, sir, I beg pardon for using the word party—the cardinal legend of which is, "strict construction of the Constitution," I deny it. Sir, I have been taught in a school which forbids the exercise of power by any branch of the Federal Government unless that power has been either expressly delegated or is fairly inferable from express delegation.

The best blood of England followed the ax when the Russells and Sidneys suffered under the parliamentary precedents which have ever been, and are now, the crying shame of English legislation. It is said that we must look to the common law of England to properly understand the meaning of the words impeachment and pardon! The absurdity of such a claim approaches sublimity. The school-boy *knows* the meaning of the word *pardon* when he escapes the deserved birch through the clemency of his instructor; *we know*, without any reference to the common law of England, the full force and meaning of the Norman-French *word* impeachment. We do not know without reference to that common law and its impeachment procedure the damnable atrocities which have been again and again a thousand times perpetrated by invoking its capricious power against the Englishman. The framers of the Constitution of the United States were well aware of the atrocities which had been perpetrated in England under the name and forms of law; and in my judgment they framed an instrument which, under the proper and legitimate exercise of the powers therein contained, will preserve alike the purity of the Government and the sacred rights of the citizen. It may be pleasant for the historic student, indeed it may be useful, to trace the right of trial by jury back to the times of the heptarchy, and he may fancy a resemblance between the representative assemblies of our days and the Witans or *Wittenagemotes* of the Saxon Alfred and his kingly line.

But, sir, we go not into the regions of the musty past to ascertain the constitutional rights of the citizen of the United States, nor the powers of the Senate conferred by an instrument which is our supreme law. And, sir, I beg to say right here that, had the procedure of impeachment never obtained in England, the framers of the Constitution would have found a way to get rid of corrupt and thieving officials, as they had found a way to rid themselves and their descendants from the tyrannous exercise of the parliamentary law of Great Britain. And now, sir, to the question: Under the Constitution of the United States, regardless alike of English precedents or the legal atrocities practiced under them, can the Senate proceed to assume jurisdiction in the matter of William W. Belknap, *late* Secretary of War, *now* a private citizen of the State of Iowa and of the United States? It is confessed that he was Secretary of War when the alleged crimes were perpetrated; it is admitted he was a private citizen when the House of Representatives preferred its articles of impeachment.

The meaning of the word impeachment, the full power thereof, the mode of procedure thereunder, in Great Britain, were perfectly and thoroughly understood by the men who composed the convention of 1787. They deemed it wise and proper to place the power of impeachment, to a certain, well-defined, and limited extent, within the provisions of the organic law, and I will now address myself briefly to the consideration thereof, fully satisfied in my own mind that a conclusion can be arrived at which will conform to the necessities of the age in which we live, without reflecting upon the wisdom of the fathers.

I call the attention of the Senate to the constitutional provisions relating to the subject-matter, and, though other Senators have so done before me, it is necessary that I should again do so, in order that my views may be properly presented; therefore I proceed by saying that section 2 of article 1 of the Constitution refers to the construction and powers of the House of Representatives. Therein I find the following:

> The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

In my judgment there is no grant of power contained in this language. It is, so to speak, functional; in other words, descriptive of one of the functions of the House; merely descriptive of where a power is to be located, to be elsewhere in the instrument defined.

I think I cannot be mistaken when I assert that here is no definitive power granted, and, unless I greatly err in judgment, I shall elsewhere find in the instrument full, definite, and perfect power.

I next direct the attention of the Senate to section 3, article 1. I find this:

> The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

This section is also, in my judgment, simply functional and descriptive. It is fully and thoroughly descriptive of the mode of procedure in the Senate, to which body is given the power, the sole power, to try all impeachments. As a descriptive, functional section it is well defined:

First. The Senate is to be on oath or affirmation.
Second. In a particular case the Chief Justice to preside.
Third. Necessary number to convict.
Fourth. Extent of judgment.
Fifth. Party convicted subject to trial according to law.

Thus the descriptive and functional power of the Senate is in this section, as I previously suggested, perfect and well defined.

By implication, and by implication merely, I gather from this section that a President of the United States may be subject to impeachment and trial by the Senate, and possibly other persons. I say possibly because the language is too indefinite to permit me to say that, by implication even, any other person than he who holds the presidential office could under this section be impeached and brought to trial.

And right here I desire to say a word as, to my understanding, to the singular reasoning deduced from this section by the distinguished Senator from Vermont, [Mr. EDMUNDS.] And in this connection I beg to remark that I am possessed with a high estimation of his abilities as a constitutional lawyer, and therefore my surprise at the course of his reasoning. Dwelling with peculiar emphasis upon the word "person" contained in this section, he argues that in that word "person" he finds authority for the Senate to try persons other than official delinquents, persons in office; and again and again he charged upon the word "person" and rung the changes thereon.

And this little word seemed to operate in like manner upon the mind of the distinguished Senator from Iowa, [Mr. WRIGHT.] And the effect of the word "person" upon the mind of my distinguished friend from Maryland is absolutely appalling. Under it, by its wonderful potency, he finds authority for the Senate to try all the civil, military, and naval officers of the United States, and possibly, if the parliamentary law of England is to obtain here, every *person* in the United States; all the subjects of the realm, as the cherished English authorities would express it.

I confess that I am surprised that three distinguished Senators should rest their main argument upon so slight a foundation; but I am in error; I ought not to say that I am surprised, for take this prop away and the entire superstructure falls to the ground. This is the base, the foundation, and without this claim, to use a somewhat vulgar yet nervous expression, they are nowhere.

Let us examine this point again:

And no person shall be convicted without the concurrence of two-thirds of the members present.

Is it possible that there can be in this little word any hidden meaning, hidden to my mind, the common mind, sufficiently powerful to change the plain and evident sense of the language?

Suppose I alter the sentence slightly, thus: "And no conviction shall be had without the concurrence of two-thirds of the members present." To my mind, and I think to most minds, the meaning of the sentence would not be changed in the slightest degree. It would remain the same, and be much improved in euphony, by the alteration in the text.

I do not deem it necessary to elaborate this point. A mere statement, in my judgment, concludes the matter.

I next call the attention of the Senate to a part of section 2, article 2, and will read all that relates to the matter in hand:

He—

The President—

shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

This is only important in this view, and in my opinion is entirely conclusive against the claim of certain honorable Senators. The claim is that the parliamentary law of Great Britain, its precedents for the last five hundred years, running through the bloodiest period of English history is and are to be used in construing the meaning of our Constitution, the framers of which are said to have acted with a full knowledge and intent that it would be so construed; and yet, the power to pardon a person wrongfully convicted in the heat of party passion was denied to the executive in all cases; a power belonging to and exercised by the Crown of England for a thousand years! In my judgment such a claim does not run on all-fours with either common humanity or common sense, and deserves the reprobation of us all.

I beg now to direct the attention of the Senate to the last remaining provision of the Constitution relating to this subject-matter—section 4 article 2:

The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Here I find the full, perfect, and absolute grant of power explicitly announcing the persons who are subject to impeachment.

First. The person clothed with the office and exercising the powers of President of the United States.

Second. The person exercising the powers of Vice-President of the United States.

Third. Each, every, and *all* of the civil officers of the United States.

Here I find the full, complete, and perfect list; as Mr. Owen would say, the "sum total." The *persons* who, not by the law and precedents of Great Britain, but by the Constitution of the United States, may be subjected to the ordeal of impeachment are here definitively named and classified: Persons in office, not out of office. The *person* holding and enjoying the office of President or Vice-President, and any other *person* in the enjoyment of any civil office. Is there the slightest doubt about the true meaning? Can there be two opinions about it? Certainly not. And why? Because each and all are to be removed *from office* on impeachment and conviction of any offense of the character named in the Constitution against the United States. A person must be *in office* to be removed therefrom.

But, says a distinguished Senator, "the Constitution does not in terms say that an official who resigns his office for the very purpose of avoiding impeachment shall not be subjected to trial." That is quite true; and a sufficient answer to that may be found in this remark: What the Constitution does not say, either expressly or by fair and honest inference, we may do, *that* the Senate cannot do. The *power is denied* when *ungranted*.

Let us view this question for one moment only. I promise to be brief, and therefore ask the attention of the Senators who do me the honor to be present, from another stand-point. I insist that section 4, article 2, contains not only the grant of power to impeach, but the classes of *persons* subject thereto:

The President, Vice-President and all civil officers.

Abandon this construction and the Senate is at once at sea, on the wide ocean of mental conjecture, and will be logically forced to the conclusion of the honorable Senators from Maryland and Oregon, as I understand them, to wit: Every man, woman, and child in the United States, capable mentally of committing crimes against the United States, is liable to impeachment. In office or out of office, ex-officials and those who have never been in office are all equally liable.

If the law of the English Parliament is to be injected by this force-pump process into the Constitution of the United States, the base use which may be made of this high court of impeachment is evident to the most ordinary minds. I say may be made. I do not say that such will be even a probable result; but I do insist that such a construction as is sought to be given to the great charter of our liberties would make the Senate "the hewers of wood and the drawers of water," and extremely dirty water, for a venal and corrupt House of Representatives, excited by party passion and heat beyond the bounds of reason and justice. But, say other Senators, "such a state of things can never exist, because this common-law doctrine of impeachment can only be brought to bear against *persons holding* civil office or such as have held civil office under the United States." Is it so? Ah, Senators, you are at sea, in a leaky ship, destitute of rudder or masts or sails, a mere hulk, where you are unballasted by the material of the Constitution! One class of senatorial pilots endeavoring to force your frail craft to one port and another class seeking a different haven.

Again, by this, and I now mean the most moderate, construction every man in this broad land who ever held office under the United States prior to the late terrible civil conflict, and did so at the time of the commencement of hostilities and deemed it his duty to side with his section, would be liable to the pains and penalties of impeachment. But says some Senator, "Do you believe that there will ever be a House of Representatives a majority of which could be found to pursue a course so suicidal to the best interests of the country?" I hope, trust, and pray not; God only knows the hearts of men and the history of the future of our country. *I know* that a construction of the organic law such as is sought to be given would place this dangerous power in a House of Representatives. What such House would do when in the possession of it is quite another question. At all events, sir, refuse to-day to so construe the Constitution, and all the Houses of Representatives who come after us will understand that the Senate of the United States will stand as a breakwater against all such stormy action.

Again, sir, adopt the construction which is claimed by certain Senators, and every person who held a military or naval office during the late, or any other war, or no war, who ever held such an office, is liable to impeachment. My good friends, the honorable and gallant Senators from Rhode Island and Illinois, must look well to their records, for they were once military officers under the United States, and are therefore liable to impeachment on a trumped-up charge of maladministration during their commands. Sir, the English law seized in its iron grasp all of her people: queens, princes, peers, commoners, priests, counselors, women, military men, naval men, cut the heads from some bodies, disemboweled others, strangled some throats, put the rope round other throats. Thank God, sir, none of these barbarous acts perpetrated under the sanction of English precedents and by the authority of English law can occur under the Government of the United States, no matter what construction is given to the Constitution.

But, Mr. President, in times of high political excitement strange, most strange judgments have been pronounced even in the United States. We have seen in our own days an eminent citizen, a resident of a State where the courts of the United States and of his own State were open for the trial of all persons charged with crime under the Constitution—we have seen a citizen, who should have been either protected by the law or convicted by the law, haled from his house in the dark hours of the night, tried by a self-constituted tribunal utterly without legal authority, and visited with a punishment in violation of his rights as a citizen, in violation of law, in violation of the Constitution!

So far as possible, let the Senate of the United States protect the citizen in his rights guaranteed by the Constitution.

The beautiful and accomplished Frenchwoman, Madame Rolande, standing under the ax of the accursed guillotine during the bloody carnival of the revolution in France, exclaimed:

O, Liberty, Liberty, what crimes are perpetrated in thy holy name!

Beware how you strain your constitutional authority under the specious, false, and dangerous plea of necessity.

Mr. President, the point was well taken, and forcibly and eloquently put by my distinguished friend, the Senator from New York, [Mr. CONKLING,] the other day, that for nearly a century, for nearly a hundred years, for a space of time during which our planet has thrice lost its population and thrice by the inevitable laws of nature regained it, no articles of impeachment have ever been preferred by the House of Representatives except against persons in the present enjoyment of civil office under the Government of the United States. No claim by that branch of the Federal Legislature having the power to impeach, since our existence as a people, has ever been made until the year of our Lord 1876 that any person could be impeached unless in the enjoyment of office.

I desire also to say that the decision of the Senate in the Blount case fully sustains the position that no person can be impeached unless in the enjoyment of a civil office under the United States. That case has been so fully and thoroughly discussed that I will not take the time of the Senate further thereon.

Many Senators seem to entertain the opinion that disqualification from holding Federal office is the great constitutional penalty; not removal from office; and that the evident purpose of the Constitution will be defeated if that instrument should be construed in the manner indicated by those Senators with whom I class myself.

Here I think is the fatal error of the reasoning. In my judgment the great penalty to a public man consists in this:

First. To be charged by the grand inquest of the people, the House of Representatives, with maladministration in office, with the commission of grave crimes against the public weal; to be impeached therefor before the Senate of the United States in the gaze of the intelligence of the world.

Second. To be stripped of the official robes; cast from office a dishonored man, to be forever thereafter the mark for scorn's unmoving finger.

And should the accused official, in hot haste to avoid the procedure of impeachment, voluntarily in the face of the terrible and damning charges against him resign the office which he has disgraced, the result is the same to him and to the country. He stands forever dishonored before his countrymen, a moral leper, and the criminal law seizes him in its iron grasp to inflict condign punishment.

But, say objecting Senators, he is not disqualified from holding office, and therefore the people are not protected to the full extent demanded by the Constitution. Ah, Mr. President, is it so? That presupposes that the people will elect as their Chief Executive a man so destitute of correct principles and official honor as to permit him to nominate to the Senate for Federal position a thief, a dishonored and disgraced felon; and, further, that a majority of the Senate are so degraded and debased that they will approve and confirm the nomination of a corrupt and venal Executive.

Sir, however this may strike the minds of Senators, of course I will not undertake to say or predict; but a mere glance at the point convinces my mind that disqualification from holding office in fact is no penalty, because either the removal from office by impeachment, or the resignation of office to avoid impeachment, is in itself an eternal barrier to the person who has violated his official obligation and prostituted his personal honor.

I have alluded to the action of the convention of the State of New Jersey as affording a precedent which should be entitled to great weight in the consideration of this important question.

In 1849, the people of New Jersey, in convention, formed a new constitution. A list of its members, which I hold in my hand, indicates that several of the ablest citizens of that State were engaged in the work. The various committees had performed their labors, and the result was before the convention.

The article on impeachment was identically the same as and was a copy of the one in the old constitution of that State. I read from the journal of the convention, page 245, section 11:

> The governor and all other civil officers under this State shall be liable to impeachment for misdemeanor in office.

Upon the consideration of this article Chief Justice Hornblower, a man who enjoyed a national reputation as a lawyer and judge of great ability, moved to amend. I now read from an authorized report of the proceedings of the convention, placed in my hands by the honorable Senator from New Jersey, Mr. FRELINGHUYSEN:

> Mr. Hornblower moved to amend so as to provide that public officers might be impeached *after* the expiration of their term of office.

The amendment offered by Judge Hornblower was in these words:

> During their continuance in office and for two years thereafter.

The amendment was unanimously adopted, and, as amended, the article was unanimously adopted and now stands as the organic law of New Jersey on this point.

I now read the article, section 11, article 5:

> The governor and all other civil officers under this State, shall be liable to impeachment for misdemeanor in office during their continuance in office and for two years thereafter.

While I admit, for the purpose of the argument, that the report of the proceedings is meager and incomplete, I unhesitatingly assert that but one meaning can be attached to the language used by the chief justice in his amendment, that is, to extend the time of impeachment two years after the termination of the office.

Then, sir, we have upon this great and important question the opinion of many of the ablest jurists of New Jersey that previous to the adoption of her constitution in 1849 a person must have been *in office* in order to have been subjected, in that State, to the procedure of impeachment.

For one, I value this precedent as of more importance than all those which England can furnish.

A question was put to the honorable Senator from Indiana I think six times, and my honorable friend answered it as many times as it was put. The honorable Senator is quite able to answer all questions and to meet all antagonists, but he will pardon me if I add to his answer. The question was: "Would not the power of impeachment be full and perfect if section 4 of article 2 had not been placed in the Constitution?" I think the question an exceedingly improper one, because no Senator has a right to suppose that any of the sections relating to impeachment could or would have been adopted by the convention, except in the very shape in which they now are. The Constitution is a work of compromises, and men gave their adhesion to matters to which they were opposed upon the condition that checks in the shape of additional sections were accepted by other men.

The opinion of Judge Story, who is regarded by many distinguished Senators as one of the ablest of our constitutional lawyers, was clearly in favor of the opinion that no person could be impeached unless actually in office.

In this opinion of Judge Story I have the more confidence from a fact which will be conceded by all Senators, to wit: the bent of his mind was favorable to a broad, not to say unlimited, construction of the powers granted in the Constitution.

I have in my mind a notable case to which I desire to call the attention of the Senate, apprehending that it will have great weight in showing the opinions of gentlemen eminent for their ability upon the point now under discussion. I allude to the impeachment of President Johnson. I believe, and have satisfactory reasons for my belief, that for days, ay weeks, the procedure against him halted because the gentlemen having the matter in charge knew that a misdescription would be fatal and were uncertain whether to allege that he was President or acting President of the United States. The idea was scouted that he could be proceeded against for acts perpetrated when he was in the enjoyment of the office of Vice-President, and there were such acts which need not here be more particularly alluded to. The astute and versatile Stevens of Pennsylvania was called into the troubled council, and even he, renowned among all the men of these latter days as the man who had driven this damnable doctrine of necessity over and through the Constitution, even he, this man of Danton-like nerve and audacity, *dared not* place before the Senate articles of impeachment against a person and describe him as late Vice-President of the United States.

No, sir; no, not until the year 1876, the centennial year, was the discovery made in our history that a person could be proceeded against who was the *late* holder of an official position. For nearly a hundred years have this people, on this question, traveled the old, plain political pathway marked down by the fathers. For one, answering for myself alone, I shall pursue the same course, and follow not after the new doctrines of strange gods.

As a sincere and honest believer in the doctrine of State-rights, *knowing* that the true interest of forty millions of people who inhabit *now* this broad land, and of the hundred millions whose coming footsteps we can almost hear, can only be maintained and conserved by a strict adherence to the letter and spirit of the Constitution, and believing, as I sincerely do, that the great danger to be apprehended to our system of government is the centralization of power in the various branches of the Federal head, I cannot, will not, and, before God and the people, *dare not* consent to this departure from the well-known principle which has heretofore universally obtained.

Therefore I say—

First. That the Constitution of the United States is the law which should govern in this case, untrammeled by English precedents or English procedures.

Second. That no other persons than those who are in the enjoyment of civil office under the Government of the United States at the time when articles of impeachment are presented by the House of Representatives are proper subjects of trial.

Third. That William W. Belknap, at the time of the presentment of these articles of impeachment by the House of Representatives, was not in the enjoyment of any civil office under the United States, but was a private citizen of the State of Iowa.

Fourth. Therefore these articles of impeachment should be dismissed by the Senate.

Opinion of Mr. Allison.

Delivered May 24, 1876.

Mr. ALLISON. The question now before the Senate for consideration is whether or not the Senate has jurisdiction to try W. W. Belknap for the offenses alleged in the articles of impeachment, which offenses were committed by him while he was Secretary of War, he

having resigned his position as Secretary, and having vacated the office before the proceedings for impeachment were begun in the House of Representatives, and being at the time of such impeachment, a private citizen, holding no office under the Government of the United States. I have given this question such examination and study as I could within the time allowed, and I have listened with interest to all the arguments that have been presented for and against jurisdiction in this case, and have endeavored in my own mind to settle the question without reference to what may be involved in the case.

The question presented to us for decision is whether or not, under the Constitution of the United States, a person not a civil officer can be impeached, although at the time the alleged offense was committed he held such office. In the present case it is admitted that the alleged offense is an impeachable one, under the Constitution, if committed by a person subject to our jurisdiction at the time the impeachment was presented.

The fact that Mr. Belknap was in office so recently before the impeachment, and that he resigned having in view his impeachment, is, upon the facts alleged and admitted, the most extreme illustration which could be presented to mark the line or boundary which excludes our jurisdiction, if it can be excluded at all.

To take jurisdiction in this case it must be shown that, without reference to the point of time, all persons may be impeached for public offenses committed in office, although when impeached they are private citizens. To exclude jurisdiction, on the other hand, it must be shown that civil officers may be impeached while in office only, and for crimes specified and declared in the Constitution, and for none other.

There are four clauses in the Constitution that directly affect this question: First, the last clause of section 2, article 1:

> The House of Representatives * * * shall have the sole power of impeachment.

Second, clause 6, section 3, article 1:

> The Senate shall have the sole power to try all impeachments.

Third, clause 7, same section and article:

> Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Fourth, section 4, article 2:

> The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

It is claimed by those who favor jurisdiction in this case that the first-quoted clause not only describes the body that shall originate impeachments, and that it not only confers the power to impeach or prosecute, but that it is the jurisdictional clause in the Constitution conferring in terms whatsoever was at the time understood in England to be the scope or boundary or extent of the jurisdiction to impeach under the parliamentary law of impeachment in England, and that here is found not only jurisdiction, but all jurisdiction; that under this clause and the following, granting to the Senate the power to try, is conferred all the authority to present and try all cases of impeachment known at the time to the common law of Parliament, save only that the judgment is limited and the concurrence of two-thirds of the Senate is required to convict, and that this grant of power is not limited or circumscribed in any manner by the fourth section of the second article either as to persons who may be impeached or as to offenses for which impeachments may be instituted and tried; that this latter section was inserted for no other or different purpose than to prescribe the punishment which must be inflicted in cases where the person impeached is still in the enjoyment of a public office; or, in other words, for the purpose of pointing out a class of persons who shall be removed from office when impeached; that this section is not jurisdictional in its character; that it confers no jurisdiction and limits no jurisdiction, but only prescribes a particular punishment in specified cases, and is not used to designate the persons who may be impeached or to define or declare what are impeachable offenses.

If this claim be true, we are compelled to resort to the parliamentary law of England to discover who may be impeached, and for what offenses, and admit that the framers of the Constitution intended to resort to parliamentary law for purposes of jurisdiction, and did not intend to define jurisdiction in cases of impeachment except by reference to parliamentary law.

It thus becomes material to ascertain who could be impeached under the parliamentary law of England. Under this law the House of Commons could proceed against the delinquent, of whatsoever degree, and whatsoever might be the nature of the offense. There was no limit as to persons or offenses, except that the Lords could not by the law try a commoner for a capital offense on the information of the king or a private person, but with this exception, under the parliamentary law of England there was no limit as to the persons who might be tried or as to the offenses (See Selden's Judicature in Parliament, 1263; also 84; 4 Blackstone, 257; Hatsell's Precedents, volume 4, page 120; and McDonald's Manual, page 284; also May's Parliamentary Law; also Story on the Constitution, volume 1, § 79.

That impeachment has this extent in England is clearly stated by all the writers on parliamentary law. It has been claimed in debate, and with much force, that this power has only been applied in cases of official misconduct or violation of public trusts. Assuming this narrower view of jurisdiction to be the true one, it nevertheless leaves open to the Senate to try all persons in the United States who at any time may have committed any offense in office or violated any public trust confided to them, and there is no limit of time during their lives, as to such persons, when they may be impeached by the House or tried by the Senate. This statement of the claim of those who invoke jurisdiction in this case shows the importance of the decision we are about to make as affecting all the people who have held official position or administered public trusts, or who may do so in the future.

It seems to me that such construction should not be given to our Constitution unless it is clearly inferable from the words employed or from the intent of the framers as drawn from the history of the time or from the debates in the convention.

It seems to me, from the letter of the Constitution itself, and from the history of the time, and from the debates in the convention, that the Constitution itself intended to include impeachment as a remedy, and also intended to definitely prescribe its limits and boundaries, prescribing a body to accuse, a tribunal to try, the extent of the punishment, the persons who may be tried, and the offenses for which they are triable, leaving nothing, either jurisdictional or remedial, to be drawn from the parliamentary law.

All writers agree that it was the intention of the framers of the Constitution to provide a government in all its parts of limited and specified powers. Story says:

> The Constitution was from its very origin contemplated to be the frame work of national Government of special and enumerated powers, and not of general and a unlimited powers.

In order that there might be no mistake upon this subject, contemporaneously with the adoption of the Constitution, among the early amendments proposed and agreed to was the tenth article of amendments, which declares that—

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

If we are to resort, therefore, to the common law of Parliament for jurisdiction in cases of impeachment, it is the only instance that can be suggested where the Constitution has such resource. It does not seem probable that, with the history of impeachments in England fresh in the memories of those who framed our Constitution, they would have selected this as the special and particular good that should be transplanted into our frame-work of government without limitation, save only as to judgments. Section 1 of article 2 declares that "the executive power shall be vested in the President of the United States of America;" yet it has never been claimed that any other or different power was here invested than that prescribed in the second article. So the judicial power under article 3 was vested in one Supreme Court and such inferior courts as Congress might from time to time ordain and establish. Under article 3 the Supreme Court decided at an early day that the United States courts had no jurisdiction over offenses at common law and that they could only take cognizance of such offenses as were created by statute, and it is now settled beyond dispute that the Federal courts will not take jurisdiction over any crimes which have not been placed directly under their control by act of Congress. It would seem that here, if anywhere, the common law should apply.

Looking first to the letter of the Constitution, and applying to it the ordinary modes of interpretation, it would seem that the framers of the Constitution meant to provide that impeachment as a remedy should be resorted to with the same distinctness and brevity with which they provided for other essential powers of government; that, in order to make this provision, they provided that the proceeding should be initiated only in the House of Representatives, that body nearest to and directly responsible to the people. They had observed that in England the king or a private person could initiate these proceedings. They also observed that in the States several modes of inaugurating impeachments were resorted to, as, for example, in Pennsylvania the General Assembly could impeach and the council of censors could inaugurate the proceedings; and in North Carolina the General Assembly or any grand jury could impeach. They therefore resolved that only one body, and that "the House of Representatives shall have the sole power of impeachment."

They next sought to provide a tribunal to try impeachments. Here also they found great diversity in the constitutions of the several States. In some of them, as in Massachusetts, the senate had the power. In others, as in New York, the senators, chancellors, and judges of the Supreme Court; in Pennsylvania, the president and the council of twelve, taking to their assistance, for advice only, the justices of the supreme court; and in Virginia the general court. And after considerable debate, and after first providing that the Senate should only try justices of the Supreme Court, and the Supreme Court all other officers, they finally adopted the provision that "the Senate shall have the sole power to try all impeachments." Thus having provided the body to prosecute, and the tribunal to try, they proceeded to the consideration of the judgment, and having the record of punishments in England fresh in their memories, which record disclosed that there was no limit to punishments in England except in the discretion of the House of Lords, they proceeded to limit the

judgment, and provided that a concurrence of two-thirds should be required to convict, and provided that—

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

This clause is the first intimation as to the extent of the contemplated jurisdiction, and the purpose to be reached by the remedy. It is here shown that the purpose was to get rid of an officer by removal, and in extreme cases to disqualify him, as if he had committed treason or other high crimes the safety of the state might require absolute disqualification. It also appears from this clause that whatever of punishment there was in the judgment was only incidental, as they were careful to provide in the same clause for punishment in the courts according to law. Reading this clause alone, without connecting it with the fourth section of the second article, it would seem that the remedy was only intended to reach officers, and I cannot see how a less judgment than removal under this clause alone could be effectively pronounced. It has been said an officer might be suspended, but that is removal for a time, and a disqualification as to the particular officer for that time. The judgment could go further, and disqualify as to every office. As before stated, this is the first intimation as to the real purpose of the proceeding.

This brings us to the fourth section of the second article. Until this section is reached no persons have been designated nor offenses described. The fourth section of article 2 provides that—

The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

This is a potential section, prescribing who may be impeached and for what offenses, and when the judgment shall take effect and the minimum penalty that shall be prescribed in all cases.

This section means to provide for all these, or it is absolutely meaningless and was wholly unnecessary, because if all jurisdiction was conferred by the last clause of the second section of the first article, it was not necessary to include the fourth section of the second article at all, because this clause had already provided by reference to the parliamentary law for everything save the extent of the punishment. It was not necessary to include these persons here, because they were already included. It was not necessary to prescribe the offenses, because all the offenses here described and many more were impeachable in England. The persons subject to impeachment and the offenses impeachable must be found in this section or not at all, as neither are mentioned in any other place. It is claimed that this section was inserted solely and only for the purpose of compelling removal from office in case the party held office. It would hardly seem that the framers of the Constitution would have given such prominence to a provision having only this object in view, especially when they had already provided that removal from office must be a part of the judgment. I therefore conclude that in order to give any effect whatever to this fourth section of the second article it is absolutely necessary to give it the full effect above stated, namely, to provide the persons to be impeached, the offenses impeachable, the minimum judgment, and the time of its application, that is, upon conviction. If this construction be the true one, it follows that removal from office must in all cases be a part of the judgment, and this judgment cannot be imposed unless the party holds an office at the time of impeachment.

HISTORY OF THE CLAUSES FOUND IN THE CONSTITUTION.

Admitting that the language employed in the Constitution is not explicit, and that we are left in doubt as to its true construction, we are at liberty to examine the history of the several clauses bearing upon the subject, and to trace their progress in the Constitution, with a view to ascertain the aim and purpose in view. In doing this we must bear in mind the prime object of the Constitution as stated by Story, namely, that "it was from its very origin contemplated to be the frame work of a national government of special and enumerated powers, and not of general and unlimited powers." On the 29th of May Mr. Randolph, of Virginia, opened the main business of the convention by presenting a plan for a national government by stating the defects in the Articles of Confederation, and proposing a remedy, which was denominated Mr. Randolph's plan, the ninth section of which provided for the establishment of a national judiciary, which should have among other things jurisdiction to try "impeachments of any national officers," thus showing that in the very beginning it was contemplated that impeachments should apply only to national officers.

Mr. Pinckney, on the same day, presented a plan which provided that "the House of Delegates shall exclusively possess the power of impeachment," that the Supreme Court should have jurisdiction to try the impeachment of officers of the United States, and that the President "should be removed from his office upon impeachment by the House of Delegates and conviction in the Supreme Court of treason, bribery, or corruption;" and that in cases of impeachment affecting embassadors and other public ministers the jurisdiction of the Supreme Court should be original.

It will thus be seen that in both the plans proposed at this early day in the convention impeachment was confined to national officers. In Mr. Pinckney's plan a special provision was inserted with reference to the President of the United States; and on the 2d of June Mr. Dickinson moved "that the Executive be made removable by the national Legislature on the request of a majority of the Legislatures of individual States." "It was necessary," he said, "to place the power of removing somewhere. He did not like the plan of impeaching the great officers of state. He did not know that provision could be made for the removal of them in a better mode than that which he had proposed." Mr. Sherman contended that the national Legislature should have power to remove the Executive at pleasure. Mr. Mason thought "some mode of displacing an unfit magistrate is rendered indispensable by the fallibility of those who choose, as well as corruptibility of the man chosen." He opposed decidedly "the making of the Executive the mere creature of the Legislature as a violation of the fundamental principles of good government." A vote being taken, Mr. Dickinson's proposition was rejected; when Mr. Williamson moved to add to the last clause the words, "and be removable on impeachment and conviction of malpractice or neglect of duty."

On the 13th of June Mr. Randolph and Mr. Madison moved the following resolution respecting the national judiciary:

That the jurisdiction of national judiciary shall extend to cases which respect the collection of the national revenue, impeachments of national officers, and questions which involve the national peace and harmony.

Which was agreed to without debate. (Madison Papers, volume 2, page 85.)

Up to this time these various propositions had been considered in committee of the whole, and on that day Mr. Gorham, chairman of the committee of the whole, reported from the committee a series of nineteen resolutions, and the resolution in relation to the national judiciary just adopted became the thirteenth of that series. The ninth of this series provided that "the President should be removable on impeachment and conviction of malpractice or neglect of duty." It will be seen that the national judiciary were here authorized to try all impeachments of national officers, and that "the President should be removable on conviction of malpractice or neglect of duty," but that no provision was made as to who or what body should prefer the accusation or initiate impeachments. This report from the committee of the whole then became the plan of the convention, and Mr. Paterson, of New Jersey, asked time to prepare and present another plan, which he said several of the deputations wished should be substituted in place of that under consideration; and on the 15th of June Mr. Paterson proposed this plan, the fifth section of which provided for the establishment of a national judiciary, and "that the judiciary so established shall have authority to hear and determine in the first instance on all impeachments of Federal officers," and the fourth section of which provided "that the President should be removable by Congress on application by a majority of the executives of the several States."

On the 16th of June the convention again went into the committee of the whole for the discussion of the plans of Mr. Paterson and Mr. Randolph, and Mr. Wilson contrasted the two plans by saying, "The executive is to be removable on impeachment and conviction in one plan; in the other to be removable at the instance of a majority of the executives of the States." On the 18th of June Mr. Hamilton discussed at length the various propositions then in committee, and presented a plan of his own, which provided in the fourth section "that the supreme authority of the United States should be vested in a governor, to be elected to serve during good behavior," and the ninth clause, of which provided that—

The governor, Senators, and all officers of the United States to be liable to impeachment for mal and corrupt conduct, and upon conviction to be removed from office and disqualified for holding any place of trust or profit; all impeachments to be tried by a court to consist of the chief or judge of the superior court of law of each State, provided such judge shall hold his office during good behavior, and have a permanent salary.

It will be seen that this ninth clause provides for the impeachment of all officers, and that they shall be removed from office on conviction, showing that he contemplated that they would be in office at the time of trial.

On the 19th of June, after a lengthy discussion of Mr. Paterson's plan, Mr. Randolph's propositions, as reported from the committee on the 13th of June, were reported back without alteration. On the 18th of July Mr. Madison proposed to modify the thirteenth resolution relating to the jurisdiction of the national judiciary, so as to read:

That the jurisdiction shall extend to all cases arising under the national laws and to such other questions as may involve the national peace and harmony.

This was agreed to; and it would seem that Mr. Madison intended to confer the authority to try impeachments upon some other body, as the thirteenth resolution, before modified, conferred upon the judiciary the power to try. On the same day the whole clause relating to the Executive was reconsidered, and a lengthy debate followed relating to the length of term of the Chief Executive; and on the 19th, the same question being under consideration, Mr. Gouverneur Morris observed that he was for a short term, in order to avoid impeachments, which would be otherwise necessary. And again, on the 20th, the Executive clause still being under consideration, Mr. Pinckney and Mr. Gouverneur Morris moved to strike out the clause "to be removable on impeachment and conviction for malpractice or neglect of duty." Mr. Pinckney here observed that the President ought not to be impeachable while in office, and in the discussion of the case before us great stress has been laid upon these words of Mr. Pinckney and similar words used by Colonel Mason in the same debate. But a careful examination of this debate will show that Mr. Pinckney was

opposed to the impeachment of the Executive at any time, and I quote his language as found on page 1156 of the Madison Papers:

Mr. Pinckney did not see the necessity of impeachments. He was sure they ought not to issue from the legislature, who would in that case hold them as a rod over the Executive, and by that means effectually destroy his independence. His revisionary power in particular would be rendered altogether insignificant.

And Mr. King, in the same debate, objected strongly to the impeachment of the President at all, unless they should make the tenure of his office during good behavior. And it will be observed that the tenure of the office of the Chief Executive had not been fixed at the time of this debate, and Mr. Randolph in this debate said that appropriate impeachment was a favorite principle with him. "The Executive will have great opportunities of abusing his power, particularly in time of war," &c. He suggested for consideration an idea, which had fallen from Colonel Hamilton, of composing the quorum out of the judges belonging to the States, *and even requiring some preliminary inquest whether just ground of impeachment existed.*

I call particular attention to this latter language, as it probably was the origin of the suggestion that the House of Representatives should become the inquest here alluded to, because up to that time nobody had been provided to make the accusation. Gouverneur Morris, who had originally joined Mr. Pinckney in moving to strike out this clause with reference to the President, after this debate said that his opinion had been changed by the arguments used in the discussion, and added, "he was now sensible of the necessity of impeachments," thus showing that the object he had in view in moving to strike out the clause was not to prevent the President from being impeached while in office, but to prohibit his impeachment at all. He goes on to say:

The Executive ought therefore to be impeachable for treachery, corrupting his electors, and incapacity, where they are causes of impeachment. If the latter, he should be punished, not as a man, but as an officer, and punished only by degradation from his office.

And this whole debate shows that, so far from Mr. Pinckney or Gouverneur Morris intimating that they were in favor of impeachment of the President after he was out of office, they both objected to his impeachment at any time, and wished to exclude him absolutely from the power of impeachment. Those who opposed impeachments were in favor of a short term for the President, and wished to make his power absolute and independent of either the legislative or judicial departments. After this debate a vote was taken and the clause retained in the Constitution.

On the 24th of July the resolutions reported from the committee of the whole on the 13th of June as amended, were referred to a committee of detail, consisting of Mr. Rutledge, Mr. Randolph, Mr. Gorham, Mr. Ellsworth, and Mr. Wilson, and at the same time the original proposition of Mr. Pinckney and also the propositions of Mr. Paterson were referred to the committee.

On the 6th of August Mr. Rutledge reported from the committee of detail reported a constitution, which provided:

The House of Representatives shall have the sole power of impeachment. (Article 4, section 6.)

The President shall be removable on impeachment by the House of Representatives, and conviction by the Supreme Court of treason, bribery, and corruption. (Article 10, section 2.)

The jurisdiction of the Supreme Court shall extend to the trial of impeachments of officers of the United States. (Article 11, section 3.)

Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law. (Article 11, section —.)

It will be seen that this report is the first intimation as to where should be lodged the power to accuse in cases of impeachment. Before this report all propositions had been considered in the form of resolutions, but now the House of Representatives for the first time was given the sole power to make the accusation. Here all trials were to be had before the Supreme Court of the United States, and were limited to officers of the United States. The President could be removable only on conviction of treason, bribery, or corruption. The offenses of other officers of the United States were not described.

On the 20th of August Gouverneur Morris, seconded by Mr. Pinckney, submitted several propositions, which were referred to the committee of detail. The substance of these propositions was that there should be a council of state, composed of the Chief Justice of the Supreme Court and six Secretaries, and at the end it was provided that each of the officers above mentioned should be liable to impeachment and removal from office for neglect of duty, malversation, or corruption. Mr. Gerry moved that the committee be instructed to report proper qualifications for President and the mode of trying the supreme judges in cases of impeachment.

On the 22d of August the committee of detail made further report with reference to several clauses, and provided that at the end of the second section of the eleventh article should be added, "the judges of the Supreme Court shall be triable by the Senate on impeachment by the House of Representatives;" thus leaving the impeachments of all other officers, including the President, to be tried before the judges of the Supreme Court. On the 25th of August, in considering the pardon clause, the President's power to pardon in cases of impeachment was excepted. This was agreed to *nem. con.*

On the 27th of August, Gouverneur Morris moved to postpone the clause relating to removal of the President on impeachment because he thought the Supreme Court was an improper tribunal to try him. On the 31st of August all the postponed clauses, and such parts of reports as had not been acted on, were referred to a committee of one from each State. On the 4th of September this committee reported recommending the insertion of the words:

The Senate of the United States shall have power to try all impeachments, but no person shall be convicted without the concurrence of two-thirds of all the members present.

The same committee reported the latter part of section 2, article 10, which read as follows:

He shall be removed from his office on impeachment by the House of Representatives, and conviction by the Senate for treason or bribery, and in case of his removal as aforesaid, death, absence, resignation, or inability to discharge the powers or duties of his office, the Vice-President shall exercise those powers and duties until another President be chosen or until the inability of the President be removed.

Here it was proposed to provide for the removal of the President on impeachment by the House and conviction by the Senate. Would it be claimed by any one that under this clause, which is substantially the clause in the Constitution now, the President could be tried after he had vacated his office by resignation or after his term of office had expired?

Mr. Wilson afterward in debating this clause and other clauses connected with it relating to the Executive said "he was obliged to consider the whole plan as having a dangerous tendency to aristocracy, and as throwing a dangerous power into the hands of the Senate. They will have, in fact, the appointment of the President, and through his dependence on them, the virtual appointment of officers, and among others, the appointment of officers to the judiciary department. They are to make treaties and they are to try all impeachments. In allowing them thus to make executive and judiciary appointments, be the court of impeachment, and to make treaties which are to be laws of the land, the legislative, executive, and judiciary powers are all blended in one branch of the Government."

This committee further reported the clause postponed on the 27th of August, making the President removable from office on impeachment for and conviction of treason and bribery, thus omitting the word "corruption." As this clause had been postponed on motion of Gouverneur Morris because he thought the Supreme Court an improper tribunal to try the President, it gave rise to considerable discussion as to which was the fitter tribunal to try, the Senate or the Supreme Court, and the committee having struck out the word "corruption," there was a debate as to whether the President should be removed for any other misconduct than treason or bribery.

On the 8th of September the clause referring to the Senate the trial of impeachments against the President for treason and bribery was taken up. Colonel Mason said:

Why is the provision restrained to treason and bribery only? Treason as defined in the Constitution will not reach many great and dangerous offenses. Hastings is not guilty of treason. Attempts to subvert the Constitution may not be treason as above described. As bills of attainder, which have saved the British constitution, are forbidden, it is the more necessary to extend the power of impeachments.

If he had for a moment supposed that the power was already conferred by the first article, why should he have used these words? He then moved to add after "bribery" the words "or maladministration." Mr. Madison said:

So vague a term would be equivalent to a tenure during the pleasure of the Senate.

Gouverneur Morris said:

It will not be put in force and can do no harm. An election every four years will prevent maladministration.

Colonel Mason then withdrew "maladministration" and substituted "other high crimes and misdemeanors against the state;" which amendment was agreed to. Mr. Madison then objected to the trial of the President by the Senate, and a considerable debate followed as to whether a President should be tried by the Senate or by the Supreme Court; but on motion to strike out the words "the Senate," made by Mr. Madison, these words were retained—9 in the affirmative, and 2 in the negative. Then Colonel Mason's amendment, wherein the word "state" was used, was struck out, and the words "United States" unanimously inserted, in order to remove ambiguity. The whole clause then relating to the President, as amended, was agreed to.

It will thus be seen that up to this point they were fixing in this clause who should try the President, and for what offenses he should be tried, and also providing that he should be removed from office on conviction. When the clause reached this point, it was voted without debate, and apparently without division, to add to the clause making the President the subject of removal the further words, "the Vice-President, and other civil officers of the United States shall be removed from office on impeachment and conviction as aforesaid," thus showing that the offenses for which the President could be tried were applied to all civil officers, and also applying to all civil officers the provision already applied to the President, namely, "shall be removed from office on impeachment and conviction," thus drawing together in a single clause the provisions relating to the offenses for which persons could be tried, and what persons could be tried. The clause relating to judgment still remained at this stage in the article relating to the judiciary, and at this time the whole Constitution was referred to a select committee on style and arrangement. The purpose of this committee was to bring the several provisions agreed to

under their proper heads, so that when this committee on style reported the Constitution as it now stands all the provisions relating to jurisdiction of persons and offenses were drawn into the fourth section of article 2, and that relating to judgment, except so much of the judgment as provided for absolute removal, was drawn into the last clause of section 3, article 1, or rather that clause was transferred from the eleventh article, where it stood among judicial powers, to the first article, and transferred without change or amendment, so that this clause was brought back in its final arrangement to stand in the Constitution before the article relating to the Executive, instead of standing after that article among the powers granted to the judiciary; and in construing these several provisions we must construe them together as a whole frame-work relating to impeachments, and give no prominence to the fact that any one clause stands before the other and should have a construction because of its relative position in the Constitution.

It will be observed that at every stage of the proceedings it was in contemplation to invoke impeachment only for the purpose of trying national officers, and this clause relating to the President became separated from that relating to other national officers because there was a doubt in the minds of many in the convention whether the President should be impeached at all, and up to the time of the appointment of the committee of detail, on the 6th of August, the tenure of the presidential office had not been fixed, and this committee of detail reported that he should hold his office for seven years, and that he should not be elected a second time, and this subject relating to the tenure of the Executive was not concluded until near the close of the convention. It will be remembered that at this stage of the proceedings the judgment in cases of impeachment was provided for by section 5, article 11, the article relating to judicial powers; and there also stood at this time in article 11 the provision extending to the judiciary the trial of impeachments of officers of the United States, so that it became necessary to modify this eleventh article. Otherwise there would be a provision for the impeachment of the President, Vice-President, and civil officers only, and the provision still left in the eleventh article for the impeachment of officers of the United States not civil, making these two provisions apparently repugnant. Therefore the committee on style must have removed the judgment clause from section 5, article 11, to section 3, article 1, the power of trying having been transferred from the Supreme Court to the Senate.

Now, the history of this clause as to persons shows that from the beginning it was intended to make full provision in appropriate phrase for all that could be done under the proceeding of impeachment; and so of offenses, because the same clause constituting what persons should be impeached contains the clause prescribing the offenses. If, as is claimed, the last clause of the second section of the first article had already provided a full remedy, why were these several amendments proposed to the clause relating to the President, and why were they inserted in that connection? Surely, as to all other officers, the words "treason, bribery, and other high crimes and misdemeanors" were already implied, as they were impeachable offenses in England and were wholly unnecessary here. If they were words of limitation and originally intended to apply to the President alone, then by their insertion here they were finally so applied to all civil officers, because in this section the President and all civil officers are placed upon an equal footing.

This summary of the various motions, amendments, shifting of clauses, adding of provisions, transposing of provisions, and the debates thereon shows that it was the intention of the framers of the Constitution to gather into this fourth section of the second article all of the persons liable to trial and the offenses for which impeachment could be tried. They did not alter or change the substantive clause relating to judgment, except to make it clear that removal from office should be the least punishment, and that in the discretion of the Senate the further judgment of disqualification might be inflicted. From this it is clear that the last clause of section 2, article 1, was only jurisdictional so far as to describe the body that should have the sole power to inaugurate proceedings, and the sixth clause of section 3, article 1, is only jurisdictional so far as to prescribe the tribunal that should try impeachments, and that the fourth section of article 2 was meant to be the jurisdictional section as to persons, as to offenses, as to time of judgments, and as to the minimum punishment that could be inflicted; and, if removal from office must be a part of the judgment, it follows that the person upon whom the judgment is to operate shall be in the possession of an office at the time of the proceedings are instituted, and it follows, of course, that this provision relating to judgment aids us in the interpretation of the term "President, Vice-President and all other civil officers," showing that they meant the jurisdiction to be confined to such officers, and not to extend to persons out of office, who may at some time in their lives have held civil office, because under the construction sought to be given to the words "civil officers" it matters not whether a person liable to impeachment has vacated his office a day before impeachment or forty years before, if he still be living.

The whole tenor of the debate upon all these provisions confirms the view I maintain; and there seems to have been good reason for this limitation. They had invoked this jurisdiction for the safety of the state, and not to inflict a punishment. They only intended it for great criminals, who should commit specified crimes, and persist in holding office notwithstanding their offenses. Therefore they provided that removal must follow for the protection of the state. They had agreed at an early day in their deliberations that such offenders should be turned over to the courts for punishment, and provided that persons impeached should nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law. This careful provision shows that they had full faith and confidence in the Federal courts to be thereafter created, and the people from the body of whom juries were to be made up. It will not do to say that if Belknap is guilty as charged, he will escape punishment if we do not inflict upon him by our judgment the disqualification clause. Congress has carefully provided a statute for the class of crimes which it is alleged Belknap has committed, and has also provided a severe judgment which shall be pronounced against him if he be guilty, which judgment must embrace the only possible judgment we can pronounce and much more in addition. (See sections 5500, 5501, and 5502, Revised Statutes.)

But it is said that according to this view he can by his resignation escape the one penalty we are authorized to impose—disqualification. Not so, because the statutes above referred to compel the rendition of this judgment.

But it may be said that under the statutes the President can pardon. Admitting this to be true, he must still be elected to office by the people, or be appointed by the President and confirmed by the Senate. It can hardly be supposed that a President and Senate would unite in restoring to office a man against whom such a judgment has been pronounced. Besides, our judgment of disqualification does not prevent the accused, as was shown by the Senator from Kansas, [Mr. INGALLS,] from holding the most important offices of honor or trust. The Senator from Kansas said truly that he could still be elected governor of the State of Iowa; he could still be elected a Senator of the United States and hold his office, because in the Blount case it was decided that a Senator is not an officer within the meaning of the Constitution of the United States.

I think I have shown, from the debates in the convention, the real intent and purpose of the framers of our Constitution, and that that purpose thus shown is in accord with the construction I give to the letter of the instrument, construing it as a whole.

But we are not left alone to the debates in the convention at the time for the true interpretation of their purpose. This purpose can also be gathered from the action of the various States, contemporaneous with the meeting of the convention and the adoption of the Constitution finally by the several States.

HISTORY OF THE CONSTITUTIONAL PROVISIONS IN THE SEVERAL STATES AT THE TIME OF THE ADOPTION OF THE FEDERAL CONSTITUTION.

This brings us to the consideration of the several provisions relating to impeachment in the different State constitutions at the time the Federal Constitution was under consideration by the convention and before its final adoption by the several States. And here it must be borne in mind that the Articles of Confederation contained no provision whatever relating to impeachment, and it must also be remembered that in the discussion that preceded the meeting of the convention at Philadelphia the failure to provide for impeachment in the Articles of Confederation did not constitute a reason for a new frame-work of government or for a revision of those articles. The chief objects sought to be secured by the convention were to provide more fully for the national defense and for the promotion of commerce.

Very soon after the Declaration of Independence, in 1776, which was in fact a formal separation of the colonies from the mother-country, the several colonies, then denominated States, began the work of framing for themselves constitutions or organic laws. I have examined with care the several provisions relating to impeachment as found in the constitutions of these new States, led thereto by the extraordinary pretense that it was the intention of our fathers to import bodily into the Constitution of the United States the parliamentary law of impeachment, vague and indefinite as it was, to adopt it without limit and without restraint except as to judgment. It would be natural to suppose that, if the States in the aggregate had such purpose in view, the several States in their local constitutions, or at least many of them, would also have resorted to the parliamentary law for the remedy of impeachment. But on examination of these several constitutions it will be seen that in no one of them was this power left vague and indefinite. On the contrary, it was specifically defined in all the State constitutions as to the body that could inaugurate the proceeding, as to the body or tribunal that could try, as to the persons who could be impeached, and as to the offenses for which impeachment would lie. And a further examination will show that the framers of our Federal Constitution practically adopted the remedy of impeachment as it stood at the time in the States of New York, Massachusetts, and New Hampshire. The New York provisions are as follows:

That the power of impeaching all officers of the State for mal or corrupt conduct in their respective offices be vested in the representatives of the people in assembly, but that it shall always be necessary that the two-thirds part of the members present shall consent to and agree in such impeachment; * * * that a court shall be instituted for the trial of impeachments and the correction of errors under the regulations which shall be established by the Legislature and to consist of the president of the senate for the time being, and the senators, chancellor, and judges of the supreme court, or the major part of them. * * * No judgment of the said court shall be valid unless it be assented to by two-thirds part of the members then present; nor shall it extend further than to removal from office and disquali-

fication to hold and enjoy any place of honor, trust, or profit under this State; but the party so convicted shall be nevertheless liable and subject to indictment, trial, judgment, and punishment, according to the laws of the land.

This constitution was adopted April 20, 1777. The constitution of Massachusetts, adopted March 2, 1780, provided that—

The house of representatives shall be the grand inquest of this Commonwealth, and all impeachments made by them shall be heard and tried by the senate. * * * The senate shall be the court with full authority to hear and determine all impeachments made by the house of representatives against any officer or officers of the Commonwealth for misconduct or maladministration in their offices. * * * Their judgment, however, shall not extend further than to removal from office and disqualification to hold or enjoy any place of honor, trust, or profit under this Commonwealth; but the party so convicted shall be nevertheless liable to indictment, trial, judgment, and punishment according to the laws of the land.

The State of New Hampshire in 1784 adopted the exact words of the provisions of the Massachusetts constitution.

Pennsylvania adopted a constitution or frame of government on the 15th of July, 1776, and provided for impeachment as follows:

Every officer of state, whether judicial or executive, shall be liable to be impeached by the General Assembly, either when in office or after his resignation or removal, for maladministration. All impeachments shall be before the president, or vice-president and council, who shall sit as judges to hear and determine on impeachments, taking, for their assistance and advice only, the justices of the supreme court.

The board of censors was also authorized to impeach any State officer. Delaware adopted a constitution in 1776, with provisions relating to impeachment, as follows:

The President, when he is out of office and within eighteen months after, and all others offending against the State, either by maladministration, corruption, or other means by which the safety of the Commonwealth may be endangered, within eighteen months after the offense committed shall be impeachable by the house of assembly before the legislative council. If found guilty, he or they shall be either forever disabled to hold any office under the government, or removed from office *pro tempore*, or subjected to such pains and penalties as the law shall direct.

The State of Virginia adopted a constitution on the 5th day of July, 1776, and provided for impeachment as follows:

The governor when he is out of office, and others offending against the State, either by maladministration, corruption, or other means by which the safety of the State may be endangered, shall be impeachable by the house of delegates in the general court according to the laws of the land. If found guilty he or they shall be either forever disabled to hold any office under government or be removed from such office *pro tempore*, or subjected to such pains or penalties as the law shall direct.

The State of North Carolina adopted a constitution December 18, 1776, and provided that—

The governor and other officers offending against the State by violating any part of this constitution, by maladministration or corruption, may be prosecuted on impeachment of the General Assembly or presentment of the grand jury in the court of supreme jurisdiction in this State.

Georgia adopted a constitution in 1777 making no provision for impeachment, but in 1789 revised her constitution and provided that—

The house of delegates shall have the sole power to impeach all persons who have been or may be in office, and the senate shall have the sole power to try.

There was no limitation as to judgment. In 1798 Georgia again revised her constitution and limited the punishment, as limited in the constitutions of New York and Massachusetts, and as in the Federal Constitution; and then in section 8 provided that—

All persons convicted on impeachment are hereby released, and persons lying under such convictions are restored to citizenship.

I have selected from the various State constitutions these provisions, to show that although the States had generally adopted the common law in their several courts of judicature, in no instance did they rely upon parliamentary law with reference to impeachments, but placed in their several constitutions specific provisions relating thereto, the intent and purpose of which provisions were to limit and restrain the power of impeachment as practiced in Parliament with reference to the persons to be impeached, and the offenses impeachable, and the judgment to be inflicted.

I also call attention to these constitutions for the purpose of showing that at the time the Federal Constitution was under consideration the constitutions of the States of New York, Massachusetts, and New Hampshire provided only for the impeachment of State officers, while the constitutions of the States of Delaware, Virginia, and Pennsylvania provided for the impeachment of officers whether in or out of office, except the State of Delaware, which provided that the president should not be impeached in office; and Virginia, that the governor should not be impeached when in office. In these latter two States all other officers were impeached in or out of office; and in these two States also impeachments were not confined to officers, but extended to all persons offending against the State.

I call attention to these provisions also to show that the impeaching power in several of the States was divided, as in Pennsylvania, it was given to the board of censors and the Legislative Assembly; as in North Carolina, to the General Assembly and any grand jury of any court of supreme jurisdiction.

It will further be observed that in the different States different tribunals were resorted to to try impeachments, so that the framers of the Constitution, finding in the several States these diverse and conflicting provisions relating to impeachments, must have intended to provide clearly for all the various steps in the proceeding, and also the persons subject to this power, as also the offenses and the time when the remedy could be applied. And I think it can hardly be supposed that having present before them the fact that no one of the States had adopted the parliamentary law of impeachments, but that in all of them specific provisions were made, they would resort in the aggregate to Great Britain for the measure or boundary of jurisdiction in such cases. It would be strange indeed if, in framing a constitution granting "special and enumerated powers," they should resort without debate, without dissent, and without restraint for jurisdiction to the musty records of Parliament, running over a period of nearly five hundred years, from the Edwards to the Georges, marking, as it did both the glory and shame of England. If they had so intended, they utterly failed to carry out the general purpose for which they met at Philadelphia.

I find, therefore, from the letter of the Constitution, from the debates in the convention, and from the current history of the time that there was no intention to resort to the common law or parliamentary law of England to ascertain the proper jurisdiction in cases of impeachment.

But passing from this review of the period contemporaneous with the adoption of the Constitution, let us examine briefly what has been said of these various clauses by the commentators and publicists who have undertaken to construe them. So far as I have been able to examine, the construction now placed upon the Constitution is entirely new with the single exception of the claim put forth by the managers on the part of the House, on the trial of the case of William Blount in 1798, and I wish to call attention to what was then said by the managers. It will be remembered that William Blount, being a Senator from the State of Tennessee, had during his senatorial term engaged in criminal correspondence with persons in the interest of Great Britain, with a view to incite the Creeks and Cherokees to take up arms against Spain, with whom the United States had a treaty of friendship. This correspondence was discovered and sent to the House of Representatives by John Adams, then President. Blount was also charged with an attempt to seduce a United States Indian interpreter from his duty and to alienate the affections and confidence of the Indians from the public officers residing among them.

On the 7th day of July, 1797, Blount was impeached at the bar of the Senate for high crimes and misdemeanors. On the day following he was expelled from the Senate, making no defense whatever against the charges presented, so that when he was impeached at the bar of the Senate he was a Senator of the United States. Afterward he employed able counsel, Mr. Ingersoll and Mr. Dallas, and the case came up for consideration in 1798. His counsel set up in his defense that a Senator was not a civil officer of the United States within the meaning of the fourth section of the second article, and therefore was not liable to impeachment.

Mr. Bayard, who opened the case on the part of the managers, in answer to this endeavored to maintain that all persons without the supposed limitation are liable to impeachment and claimed that none of the positive provisions of the Constitution declared in what cases an impeachment should be sustained or to what persons it should be confined, and said:

Therefore I shall insist that the impeachment remains as at common law, with variance only as to positive provisions in the Constitution.

He proceeded to show that the question is, What persons, for what offenses, are liable to be impeached at common law? and added that he "is confident that the learning and liberality of the counsel will save him the trouble of argument or citation of authorities to establish the position that the question of impeachability is a question of discretion only with the Commons and Lords, and that all the king's subjects are liable to be impeached by the Commons and tried by the Lords upon charges of high crimes and misdemeanors, and that this jurisdiction goes to the extent of the articles exhibited against Blount." Although the managers argued at some length that a Senator of the United States is a civil officer, yet they laid chief stress upon the argument that the jurisdiction in cases of impeachment was limited only by the common law, and that therefore it was not necessary to establish that William Blount was a civil officer.

Mr. Dallas and Mr. Ingersoll, counsel for Mr. Blount, argued at length to establish that—

Only civil officers of the United States are impeachable, and that offenses for which an impeachment lies must be committed in the execution of a public office.

After the arguments of the managers and counsel, the following resolutions were proposed:

That William Blount was a civil officer of the United States within the meaning of the Constitution of the United States, and therefore liable to be impeached by the House of Representatives; that as the articles of impeachment charge him with high crimes and misdemeanors, supposed to have been committed while he was Senator of the United States, his plea ought to be overruled.

These resolutions were debated on the 7th, 8th, and 9th of January, 1798, and on the 10th a vote was reached, and they were rejected—yeas 11, nays 14; and on the following day on motion it was determined—

That the court is of opinion that the matter alleged in the plea of defendant is sufficient in law to show that this court ought not to hold jurisdiction of the said impeachment, and the said impeachment is dismissed.

Upon this the vote was reversed, 14 voting for this resolution and 11 voting against it.

The plea is as follows:

That proceedings by impeachment are provided and permitted by the Constitution of the United States only on charges of bribery, treason, and other high crimes and misdemeanors alleged to have been committed by the President, Vice-President, and other civil officers of the United States in the execution of their offices

held under the United States, as appears by the fourth section of the second article and by the seventh clause of the third section of the first article, and other articles and clauses contained in the Constitution of the United States.

That, although true it is that he, the said William Blount, was a Senator of the United States from the State of Tennessee at the several periods in the said articles of impeachment referred to, yet that he, the said William, is not now a Senator and is not, nor was at the several periods so as aforesaid referred to, an officer of the United States; nor is he, the said William, in and by the said articles charged with having committed any crime or misdemeanor in the execution of any civil office held under the United States or with any malconduct in civil office, or abuse of any public trust in the execution thereof.

It will thus be seen that it was maintained on the part of the counsel for Blount that it was necessary that the party impeached should be a civil officer of the United States under the fourth section of the second article, and it was maintained on the part of the managers that the jurisdiction to impeach embraced every case and every person known to the parliamentary law of England. Therefore it seems clear to me that the Senate decided in the Blount case that only civil officers could be impeached, and, so deciding, they must have held that the jurisdiction of persons and offenses was described in the fourth section of the second article, and that impeachments were limited to the cases therein defined. So that, to my mind, the Blount case has practically settled the question in this case.

Judge Story, in commenting upon what are impeachable offenses, says:

It seems, then, to be the settled doctrine of the high court of impeachment that, though the common law cannot be the foundation of a jurisdiction not given by the Constitution or law, that jurisdiction when given attaches and is to be exercised according to the rules of the common law.

Thus showing that in his opinion the common law could not be resorted to for jurisdiction. It is claimed by those who favor jurisdiction in this case that the common law measures the jurisdiction. Judge Story, in commenting upon the fourth section of the second article, after quoting the section, says:

From this clause it appears that the remedy by impeachment is strictly confined to civil officers of the United States, including the President and Vice-President. In this respect it differs materially from the law and practice of Great Britain. In that kingdom all the king's subjects, whether peers or commoners, are impeachable in Parliament, though it is asserted that commoners cannot now be impeached for capital offenses, but for misdemeanors only. * * * There seems a peculiar propriety, in a republican government at least, in confining the impeachment power to persons holding office. In such government all the citizens are equal, and ought to have the same security of a trial by jury for all crimes and offenses laid to their charge when not holding any official character. To subject them to impeachment would not only be extremely oppressive and expensive, but would endanger their lives and liberties by exposing them against their wills to persecution for their conduct in exercising their political rights and privileges. Dear as the trial by jury justly is in civil cases, its value as a protection against the resentment and violence of rulers and factions in criminal prosecutions makes it inestimable. It is there, and there only, that a citizen in the sympathy and impartiality, the intelligence and incorruptible integrity of his fellows impaneled to try the accusation, may indulge a well-founded confidence to sustain and cheer him. * * * Indeed the moment it was decided that judgment upon impeachments should be limited to removal and disqualifications from office, it follows as a natural result that it ought not to reach any but officers of the United States. It seems to have been the original object of the friends of the national Government to confine it to these limits, for in the original resolutions proposed to the convention and in all the subsequent proceedings the power was expressly limited to national officers. (Story on the Constitution, volume 1, § 790.)

This learned commentator upon the Constitution seems also to have considered carefully whether one out of office could be impeached for crimes alleged to have been committed in office, and expresses his view upon this point as follows:

As it is declared in one clause of the Constitution that judgment in cases of impeachment shall not extend further than to removal from office and a disqualification to hold any office of honor, trust, or profit under the United States, and in another clause that the President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes or misdemeanors, it would seem to follow that the Senate, on the conviction, were bound in all cases to enter a judgment of removal from office, though it has a discretion as to inflicting the punishment of disqualification. If then there must be the judgment of removal from office it would seem to follow that the Constitution contemplated that the party was still in office at the time of impeachment. If he was not, his offense was still liable to be tried and punished in the ordinary tribunals of justice, and it might be argued with some force that it would be a vain exercise of authority to try a delinquent for an impeachable offense when the most important object for which the remedy was given was no longer necessary or attainable. And although a judgment of disqualification might still be pronounced, the language of the Constitution may create some doubt whether it can be pronounced without being coupled with a removal from office. There is also much force in the remark that an impeachment is a proceeding purely of a political nature. It is not so much designed to punish the offender as to secure the State against gross official misdemeanors. It touches neither his person nor his property, but simply divests him of his political capacity. (See Story on the Constitution, § 803.)

It will thus be seen that Mr. Justice Story, in his exhaustive chapter on the subject of impeachment, after an examination of all the authorities upon the subject and after an examination of the letter of the Constitution and the debates in the convention, arrives at the conclusion that section 4, article 2, does describe the offenses and the persons liable to impeachment, and that it was his opinion that the remedy was intended to apply only to civil officers of the United States; and that, inasmuch as judgment of removal was necessary in all cases, only persons in office could be impeached. For myself I prefer to rely upon this high authority rather than to give a strained and enlarged construction to the Constitution, especially so when I find that Chancellor Kent and Mr. Rawle both resort to the fourth section of the second article for jurisdiction in cases of impeachment as to persons and offenses. Curtis, in his History of the Constitution, volume 2, pages 261 and 262, in commenting upon the impeaching power, declares that the object of impeachment was to remove the President, the judges, and all other civil officers of the United States from office on impeachment. All these authorities seem to concur in the view that the object of impeachment was not to provide a punishment, but only to secure removal from office and protect the state from the machinations of great offenders who might be guilty of high crimes in office.

I agree with my colleague [Mr. WRIGHT] that we cannot consider the motives which actuated the accused in presenting his resignation. I further agree with him that the time of the resignation is not material, provided that it was made before the impeachment proceedings began.

Should jurisdiction be taken in this case, the principle established subjects to the impeaching power all persons who are now living who may at any time heretofore have held civil office or place of public trust under the United States; and, under the arguments of those who claim jurisdiction, it will also subject to the impeaching power all the military and national officers of the United States now living or who may come hereafter. It does not seem to me that it could have been the intention of the framers of the Constitution to thus enlarge the power.

It has been said that limiting the impeaching power to the removal of dangerous persons from office is to practically destroy the remedy, as all of those who ought to be impeached will resign and escape impeachment, while only those who in the end will perhaps not be convicted will continue in office so as to place them within the power of the House and Senate. This does not follow, because if it be true that the object of impeachment, or its principal object, was removal from office, then by resignation or expiration of the term of service the remedy intended is reached. At best, impeachment is a cumbrous remedy. In the case at bar we have exhausted three months of the most valuable time of Congress on preliminary questions. The trial of Hastings lasted ten years in Great Britain, and they have had but one case of impeachment since and no case within seventy years. Since the formation of our Government we have had but six cases in all and only two convictions. In my own State, Iowa, our constitution has provided for impeachment for thirty years, and not a single case has occurred, and we all know how difficult it is to find precedents in the various States with reference to this remedy, showing that in the States and under the Federal Government offenses are punished under the regular and certain processes of the law in the Federal and State courts, and that the trial of causes by a political body is not a favorite method of punishing offenders in this country.

Therefore I conclude that it is unnecessary, for the purpose of conserving the public interests, to give a strained construction to the Constitution for the purpose of invoking this power when all substantial remedies are reached by giving it the limited construction originally intended by those who framed it.

I have attempted to give a reasonable construction to the letter of the Constitution as derived from the words used in the instrument, construing the several provisions together. I have examined in detail the progress of the several provisions through the convention, and the debates thereon. I have shown from the contemporaneous history of the several States that specific provisions for impeachment were made in all of them, and that in none of them did the common or parliamentary law prevail as to jurisdiction of persons or offenses. I have endeavored to show that the construction I give to the Constitution has been uniformly acquiesced in for nearly a hundred years without being in any way challenged except in the single case of the argument of the managers in the prosecution of Blount. I have also endeavored to show that the construction I give to the Constitution provides the substantial remedy originally intended, and I therefore conclude that upon principle, upon the letter of the instrument, and from all the precedents cited, the Senate has not jurisdiction to try the case now at bar, and that the proceedings should be dismissed.

Opinion of Mr. McMillan,

Delivered May 25, 1876.

Mr. MCMILLAN. It is quite manifest from various provisions of the Constitution that it was the intention of the framers of that instrument to vest in the General Government a power of impeachment.

It is claimed in the case at bar that the fifth paragraph of section 2, article 1, of the Constitution is the only provision thereof which affects the jurisdiction of the persons impeachable and the subject-matter of impeachment, and that *it* vests in the House of Representatives all the power of impeachment at common law, and that we are to refer to the common law to ascertain the nature and extent of that jurisdiction. It is further claimed by the Senator from Vermont [Mr. EDMUNDS] and the Senator from Ohio [Mr. SHERMAN] that, conceding jurisdiction to be conferred *only* by the fourth section of article 2, persons once officers are impeachable after they are out of office for offenses embraced in this section committed while in office.

The fifth paragraph of section 2 of article 1 of the Constitution is as follows:

The House of Representatives * * * shall have the sole power of impeachment.

Does this vest in the House of Representatives all the power of

impeachment at common law? If so, it must be because the operative word "impeachment," *ex vi termini*, imports the jurisdiction of the persons impeachable and the subject-matter of impeachment. The word impeachment is used in the fourth section of article 2 of the same instrument, and as there used cannot embrace the jurisdiction of the persons, for the persons subject to the jurisdiction are expressly designated. It cannot embrace the subject-matter of impeachment, for the offenses are therein enumerated. It clearly, in that connection, refers to the remedy and embraces only the accusation and prosecution in the proceeding. The same meaning may be given to the word as used in the fifth paragraph of section 2, article 1, and still leave that provision fully operative. The word does not, therefore, *per se*, import jurisdiction of the persons impeached or the subject-matter of impeachment. The meaning of the clause is, therefore, open to construction.

May it reasonably be limited to embrace only the accusation and prosecution of the remedy?

The framers of the Constitution were familiar with the fact that in Great Britain the power of impeachment was not confined to the House of Commons, but extended alike to the king and the citizen. They knew also that, in some of the constitutions of the States about to be formed into a Federal Government under the Constitution they were framing, both houses of the Legislature joined in the accusation and the trial in cases of impeachment. They were about to institute an extraordinary remedy, the object of which was to protect the Government against corrupt officers who might be called to administer its affairs, which would involve the most sacred rights they were about to secure to the citizens of the Republic. The House of Representatives, for the organization of which they were to provide, were to be the immediate representatives of the people. It was therefore fit that with that body, and it alone, should be deposited so grave a power. Jealous of the rights of the citizen, that justice might not be violated by the accuser becoming the judge, it was the great wisdom of our fathers which limited the power of the House of Representatives to that of accusation. (Story on the Constitution, §§ 686–687, 741.)

But although the clause under consideration does not necessarily import jurisdiction of the persons impeachable or the subject-matter of impeachment, but only the power of accusation and prosecution, was it the intent of the framers of the Constitution by this language to confer upon the House of Representatives all the power of impeachment at common law possessed by the House of Commons of Great Britain at the adoption of the Constitution?

It is laid down by English commentators, and the doctrine is recognized by Judge Story in his Commentaries on the Constitution, that by the common law the power of the House of Commons to impeach embraced private individuals, and it is not disputed that the punishment upon impeachment and conviction was at the discretion of the lords, extending to property, person, and life. If the exercise of this jurisdiction upon individuals was so shocking to the public sense as to prevent its exercise in more modern times, the omission to use it did not divest the power. The comparatively recent case in the English courts in which a party demanded his right of trial by battle, which, although so long disused that it was known only in the history of the law, was found to be a legal right, is familiar, at least to the profession. The *non user* of a right does not abrogate the law. If, therefore, this jurisdiction to impeach the individual existed at common law, the express grant of the common-law power claimed to exist in the Constitution preserves it here in all its vigor. It must at least be said that, if the construction claimed for this paragraph of the Constitution is correct, the exercise of a power the most dangerous and odious which could be invoked by the National Government is left to doubtful construction.

But, however this may be, the power of impeachment at common law indisputably excluded the king and embraced all officers of every character and grade in the realm, and all persons holding or exercising a franchise of the Crown, and extended to all crimes and abuses of the vested franchises affecting the public interests. If this be the jurisdiction conferred by our Constitution, the power to impeach extends to all civil, military, and naval officers, and to all persons holding any franchise from the General Government. Embraced within the latter class are all bank officials of national banks, all railroad officials of railroads under the laws of the United States, and officials of any corporation which may be organized under the laws of the United States.

On the other hand, resting the jurisdiction solely upon this clause and referring to the common law to ascertain its extent, the President of the United States could not be impeached, for he derives or may derive his office from a source paramount to the National Government. (Story on the Constitution, § 791.) If such power and such want of power be now found to exist in the Constitution, the people of the country wil suddenly awake from the dream of security of almost a century's duration, in the midst of darkness, filled with terror and fearful forebodings.

Therefore, considering the circumstances under which the Constitution was framed, the character of its officers, the purposes they desired to accomplish by their work, and referring to the nature and extent of the common-law jurisdiction in impeachment, it would seem to be unreasonable that our fathers would embody in the fundamental law of the nation a power and jurisdiction so unlimited, so liable to abuse, and so obnoxious to a liberty-loving people as the common-law jurisdiction of impeachment.

But it is a familiar rule of construction that in arriving at the meaning of a written instrument all its provisions must be construed together and in the light of each other. Section 4 of article 2 of the Constitution is as follows:

> The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

This, it is claimed, is not a grant of jurisdictional power.

The President, under the common-law power of impeachment, would not be impeachable; therefore he is not impeachable at all unless this section makes him so. This language, "The President * * * shall be removed from office on impeachment for, and conviction of, treason," &c., necessarily implies that he may be impeached for and convicted of the offenses designated. (Story on the Constitution, § 791.) It is, then, a jurisdictional section so far as he is concerned. As the same words apply to the "Vice-President and all civil officers of the United States," it must have the same effect as to them. The section is, therefore, a jurisdictional one, both as to the persons and the subject-matter of impeachment.

In considering the fifth paragraph of section 2, article 1, we have already seen that full effect may be given to it by construing it to be a grant of power to accuse and prosecute only, and that such construction is reasonable. If it had been the intention of the framers of the Constitution in that paragraph to embrace the jurisdiction of the persons impeachable and the subject-matter of impeachment, they would certainly have disposed of the whole subject and embraced the President and Vice-President. The reasonable conclusion, therefore, is that the fourth section of article 2 is the only section which confers jurisdiction of the persons impeachable and the offenses for which impeachment will lie.

Again, conceding for this point that some difference of opinion may have existed heretofore as to whether under this section a person could be impeached after he left office for offenses committed while in office, yet I have been unable to learn from my own investigation or from the investigation of other Senators upon this trial—and the latter seems to have been exhaustive—that it was ever claimed, except by the managers in the Blount case, that the fifth paragraph of section 2, article 1, conferred on the House of Representatives all the common-law power of impeachment; on the other hand, whatever construction as to the extent of the jurisdiction conferred may be given to section 4 of article 2, Kent, Rawle, Story, Bouvier, and all the public men of the country refer the jurisdiction to that section, and the decision in the Blount case clearly, to my mind, settles the question that it is the source of jurisdiction in impeachment.

This brings me to consider whether under this section a person who is out of office may be impeached for crimes committed while in office.

If this section, as I believe and have endeavored to show, is the only source of jurisdiction, it is exclusive, and those only are subject to impeachment who are embraced within it; that is, the President, Vice-President, and all civil officers of the United States. This enumeration of these persons excludes all others.

Paragraph 7 of section 3, article 1, provides that—

> Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

The impeachment and conviction are for crimes, but the proceeding is not for the punishment of the offense nor the offender, for that is expressly left to the criminal proceeding by indictment, and if any element of punishment as such entered into the impeachment, it would plainly subject the citizen to a double punishment for the same offense.

The only purpose of the proceeding by impeachment, therefore, must be the preservation of the purity and the protection of the Government. Official station, in the contemplation of the Constitution, is the only thing which affords the opportunity of effecting the injury to the Government against which it was intended by this proceeding to protect. Therefore the judgment in cases of impeachment relates only to the incumbency of official position by the accused.

Paragraph 7 of section 3, article 1, above quoted, provides that—

> Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

The judgment must be based upon the conviction of a person impeachable of an impeachable offense. What might be the construction of this provision if it stood alone, it is not necessary now to determine. If I am right in the view I have taken of the Constitution, section 4 of article 2 prescribes the only persons and offenses which are impeachable, and that section provides that all of the officers therein designated shall be removed from office on impeachment for and conviction of any of the offenses therein mentioned. The removal from office is based upon the conviction. It must therefore be by the judgment upon the conviction. The language of section 4 is unambiguous and mandatory—"shall be removed from office."

Paragraph 7 of section 3, article 1, must be construed in connection with section 4 of article 2, and thus construed the judgment must, in all cases, be removal from office, and must not in any case extend further

than "removal from office and disqualification to hold and enjoy any office * * * under the United States." The power to disqualify cannot be exercised except in connection with removal from office; but it need not be exercised in all cases of removal.

Removal from office, then, must be the judgment in all cases of impeachment; but removal from office cannot take place where the person impeached and convicted is not in office; therefore a person not in office cannot be impeached.

The terms used in section 4 of article 2 to designate who are impeachable likewise imply persons in office.

Whether after jurisdiction in impeachment is taken a resignation can be effectual to oust the jurisdiction, and whether an officer can be impeached for offenses committed prior to his entrance into office, are questions not necessary to be determined in this case, and upon which I express no opinion.

For the reasons given, I am of opinion:

1. That paragraph 5 of section 2, article 1 of the Constitution confers upon the House of Representatives the exclusive power to accuse and prosecute in cases of impeachment, nothing more.

2. That section 4, article 2, prescribes the officers impeachable and the offenses for which they may be impeached, and that power extends only to the President, Vice-President, and other civil officers of the United States while in office.

3. That the defendant, William W. Belknap, being out of office and a private citizen at the time and before the proceeding for his impeachment took place, the House of Representatives had no authority to impeach him and the Senate has no jurisdiction to try the impeachment.

Opinion of Mr. Ingalls,

Delivered May 25, 1876.

Mr. INGALLS. Mr. President, the American people have exhibited so many convincing proofs of their capacity for self-government, and have falsified so many prophecies of disaster, that I hesitate to agree with those who affirm that either decision of the question now before the Senate is fraught in the alternative with fatal consequences to the Constitution of our country or to the liberties of its citizens.

Should it be determined that the respondent, having resigned, continues liable to impeachment for misconduct while in office, it would hardly be considered a usurpation of general criminal jurisdiction or a return to the judicial atrocities of the most hateful epoch of English history, and presenting thus a novel menace to the guarantees of citizenship.

Should it be decided on the other hand that liability to impeachment terminates when the accused ceases to be a civil officer, the great safeguards of the Constitution would still remain. When the Constitution ceases to express the convictions, the purposes, the conscience of the people, it will cease to be operative. They will either amend it or they will abrogate it, or they will evoke from its recesses some latent energy to become the potent minister of their will.

Nor do the securities and covenants of liberty and citizenship rest upon any such brittle and shifting foundation as the decisions of courts or senates on the construction of words, and clauses, and sentences of the Constitution. When the conclusions of these tribunals fail to register the decrees or to reach the full measure of the intelligence of the people, they will be reversed by a judgment in that assize from which there is no appeal.

I therefore approach the subject relieved of all apprehensions of practical dangers, whether the determination may be upon the one side or upon the other. Our political history for ninety years refutes the idea that the subject is of very grave or paramount importance. Impeachment, even in cases where the power was undoubted, has been resorted to infrequently. States have been saved without it. Official delinquency has not been uncommon, but impeachments have been rare. The process is dilatory, unwieldy, and expensive. The machinery is complicated. The possibilities of partisan unfairness and malignity are too great. The disproportion of resources between the prosecutor and the offender are so marked as to shock the love of equity and justice which characterizes the Anglo-Saxon. The idea upon which it is founded is repugnant to the principles of popular government and to the temper and instincts of a free people.

The application of the doctrine now sought, whether it be regarded as a limitation or an expansion of the power of impeachment, is novel, but its assertion is not. The question whether the liability to impeachment terminated with official existence has often been mooted, but it now for the first time arises for practical determination. I do not think it will ever rise again. If the jurisdiction is denied, it is not likely that it will be re-asserted. If the late Secretary of War is tried, the spectacle will be such as to prevent the case from being cited as a precedent.

Fortunately the discussion is not political, and this source of our congratulation is increased by the reflection that the question is divested of a partisan aspect by the disjunction of one party only. One great political division of the Senate is practically unanimous upon a doubtful question of constitutional law, and is re-enforced by allies from that party with which the respondent has heretofore been associated. Political organizations founded upon ideas rather than upon policies are tolerant of differences of opinion and concede the right of individual judgment; but they always embrace among their adherents large numbers of that invaluable class of supporters who invariably study how they can differ with their associates, and never believe they are truly independent unless they act with their adversaries.

That this jurisdictional question in a practical sense now for the first time arises is evidence that it is not an integral part of the Constitution nor essential to national safety. That when it is thus for the first time presented it appears in such dubious and uncertain guise that the most eminent jurists of one political faith are spontaneously agreed, while those of the other differ *toto cœlo* in their interpretation of six simple sentences in the Constitution, is further evidence that the framers of that instrument either considered it a matter of small moment or were unfortunately negligent in the expression of their designs.

For it must be observed that the grant of power is explicit, and cannot be classed among those latent, obscure, and ambiguous powers, the result of compromise, and the fatal cause of party dissension and national peril.

The constitutional provisions concerning impeachment have been so often stated that reiteration seems superfluous; but they must be repeated here. They are as follows:

The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. (Article 2, section 4.)

The House of Representatives * * * shall have the sole power of impeachment. (Article 1, section 2, clause 5.)

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present. (Article 1, section 3, clause 6.)

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law. (Article 1, section 3, clause 7.)

Stated in their natural order, and assembled in their proper sequence, they would read thus:

The President, Vice-President, and all civil officers of the United States shall be subject to impeachment for treason, bribery, or other high crimes and misdemeanors; and on conviction shall be removed from office. The House of Representatives shall have the sole power of impeachments, and the Senate shall have the sole power to try all impeachments. Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable to indictment, trial, judgment, and punishment according to law.

Leaving particulars and descending to mere description, they designate—

First. The persons who may be impeached.
Second. The offenses for which impeachment will lie.
Third. The penalty on conviction.
Fourth. The method of procedure.
Fifth. The limitation of the judgment.

The student of English history will not fail to note that each of these particulars, with the possible exception of the fourth, is a direct departure from the law of Parliament upon impeachment. Under that all the king's subjects could be impeached, but the king could not. They could be impeached for any offense. Any punishment could be inflicted, and the power of judgment was absolute.

I am compelled, therefore, to dissent from the doctrine that the clauses giving the House the power of impeachment and the Senate the power of trial are in any sense jurisdictional, but must regard them as functional merely; directory of the methods of practice and procedure under the Constitution, and not as a grafting upon our system of the process of impeachment as recognized by the parliamentary law of England. For it must be remembered that in a free popular government like that which our fathers instituted impeachment as known and practiced in Great Britain would be illogical, anomalous, and unnecessary.

Where monarchs were absolute and the right to rule descended through successive generations of avaricious and sensual tyrants; where corrupt favorites administered the offices and plundered the revenues of the kingdom at the pleasure of the king; where the property of the realm accumulated in families, and all the prerogatives of wealth and power were hereditary, there was no relief from oppression but by extraordinary methods—the dagger, revolution, and the scaffold.

Hence in the great struggle between kings and subjects, when law at last succeeded force, the right to impeach corrupt and incompetent rulers was asserted in Germany and transferred to England as early as the fourteenth century. Though it was an advance upon the redress of force, yet its methods were violent and its penalties cruel, inhuman, and atrocious. Its victims were put to death, and their mutilated remains refused burial; their blood was corrupted; they were outlawed, banished, and exiled; they were stripped of their estates and dignities, and pursued with dishonor beyond the grave. And thus impeachment was associated with that odious group of remedies, among which were *ex post facto* laws, bills of attainder, and pains and penalties.

But in a country where the people are the rulers the necessity and the occasion for impeachment are greatly diminished. Where neither

wealth nor power is hereditary, there need be no corruption of blood; and where the tenure of office is brief and depends upon the will of the people, impeachment is generally conducted at the ballot-box.

It must therefore be apparent that when the founders of the Republic conferred upon the House the power of impeachment, they did not mean impeachment as understood by the laws of England. There was not only no necessity for it, but the idea would be repugnant to their experience and without foundation in reason.

We must then inspect the other provisions of the Constitution to discern their purposes and ascertain the limitations they intended to prescribe.

These relate to the subjects, the objects, and the penalties of impeachment; and, when considered in connection with the uniform practice of Congress, seem to indicate conclusively that the subjects of impeachment are the President, Vice-President, and all civil officers of the United States, and that the sole objects of the process are to divest the offender of certain political attributes and functions, not for the punishment of the individual, but for the protection of the State.

Articles 5 and 6 of the amendments to the Constitution are explicit, and by irresistible inference exclude any other conclusion. They are in the following language:

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb.

ARTICLE VI.

In *all* criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law.

For the sake of illustration, let us suppose that the late Secretary of War had deliberately and with malice aforethought murdered a post-trader, a capital offense, the punishment for which would be death by hanging. This would also be an impeachable offense, for which he might be removed and disqualified; but if such proceedings should be had, would it be considered as punishment for the crime of murder? Or let it be supposed that, having been tried and convicted for murder in the courts of the District and lying in prison waiting execution, he should refuse to resign and should be impeached. Would his removal be regarded as punishment for his offense? No one would seriously make such pretense. The application of the provisions of articles 5 and 6 is too obvious to need further comment. Impeachment cannot be a criminal prosecution.

The determination of the scope and purpose of impeachment is materially aided by a consideration of the nature of the penalty affixed to conviction. The punishment is in one sense always the measure of the offense. The penalty defines the grade to which the crime belongs.

The judgment in impeachment is confined to the political relations of the respondent to the state. It does not affect his citizenship. The right to hold office, either actual or potential, is not one of the rights of citizenship. Like suffrage, it is a privilege or franchise granted by society to the citizen.

The rights of citizenship are three: the right to live, the right of personal security or liberty, and the right to hold property. The judgment upon conviction on impeachment does not affect either of these. In England it was otherwise. If the accused were found guilty he could be deprived not alone of his political rights but of the rights of citizenship. His life could be taken at the block, his liberty could be destroyed by exile or incarceration, his property could be appropriated by fine or sequestration.

But under the Constitution the character of the proceeding is radically changed. It is no longer aimed at the citizen as such. The punishment for crime, which abrogates citizenship by execution, by imprisonment, by fine, is remitted exclusively to the courts, and impeachment is restricted to the political relations of the accused, and these are only partially rescinded in case of guilt. He may be impeached for murder, arson, robbery, or any crime whose penalty is defined by law, and, if convicted, he can only be removed from office and disqualified.

His citizenship is unimpaired and many of his political rights remain. He can still vote. He can serve in the militia and upon juries. His relations to the state are changed, but he is still entitled to the protection of its laws and to the full benefit of all the guarantees and immunities of the Constitution.

This vast modification could not have been accidental. It must have had a purpose, and it serves still further to accentuate and emphasize the position that, as the penalty is political purely, so the proceeding was intended to be political purely, and was devised for protection, and not for punishment. Unless it be so, then many inferences of the Constitution are controverted and several of its plain declarations are rendered ineffectual and abortive.

While upon the subject of punishment I pause to consider an argument which has been strenuously put forward by the managers and their associates in the prosecution. It is their strong fortification and tower of defense. After inspecting the Constitution with the telescope and the microscope; after distilling it in the alembic of verbal criticism; after analyzing it as a chemist resolves the waters of a mineral spring till his agents cease to testify and he reports of this or that constituent a trace only, the combined efforts of all these doctors have adduced the convincing argument that unless the right of impeachment for official misconduct continues after official existence has terminated the jurisdiction depends not upon the court but upon the criminal. It is insisted that, if by resignation he can defeat the judgment of disqualification, he renders nugatory the great design of the process, which is not only to put a man out but to keep him out; that, unless he is disqualified, a perverse or corrupt Executive can re-appoint him after his resignation and thus defy and thwart and trifle with the moral sense and will of the nation. They contend that he must not only be banished from the Eden of office, but that the angel of vengeance with the flaming sword of disqualification must be stationed at the gate to prevent his return, and that unless this is done the public service may be stained, corrupted, and polluted by the invasion of dissolute and unseemly reprobates who will thus be superior to law. The necessary corollary is that if they are so disqualified the nation is safe, and that they can then endanger the councils of the nation no more. Aside from the fact that such conduct would be impeachable in the Executive and that he could not resign and re-appoint himself, there is the further consideration that the security of the people from corrupt officials lies in public virtue and intelligence, and not in statutory prohibitions.

But let us for a moment examine this pretext and see how far the protection would extend were the sentence of disqualification in all cases pronounced. What additional guarantee, not based in the morality of the people, would be derived from the strictest application of this part of the penalty?

Should the respondent in the case at bar be convicted and disqualified, how could the country be safe from his machinations were he an ambitious, intriguing schemer with a following sufficiently numerous to make his pretensions formidable? The disqualification is only partial. He could not be President, nor Vice-President, nor Cabinet minister, nor postmaster, nor an officer in the civil, military, or naval service of the United States; but after going forth from this chamber of doom with the indelible stigma and brand upon his brow, should he return to Iowa, whence he came, what but the will of the people could prevent him from being mayor of his adopted city or alderman of his native village? What but this could hinder him from becoming sheriff or treasurer of his county? What but this could interfere with his election to the Legislature and his participation in the enactment of laws and the election of Senators? What but this could stand in the path of his entry into the executive office as governor of the State? Should his ambition take a higher flight and assume a wider range, what but this could forbid his admission to the Chamber at the other end of the Capitol as a Representative in Congress, and, in a not impossible contingency, of electing a President of the United States? What but this could bar his taking the oath as a Senator of the United States and standing as the peer of any who had pronounced sentence upon him, the representative in this body of a sovereign State in the American Union? One Senator at least who hears me thought the position of Senator preferable to that of Secretary of War. The Senate makes and unmakes civil officers of the United States, and none of the positions I have named fall within the category from which your most unrelenting vengeance could exclude him.

No, Mr. President, removal is not punishment; disqualification is not punishment. In the nature of things they cannot be punishment; and the proceeding in which they are incidents is a political process designed to relieve the public service of an official delinquent.

I pass, then, to a review of section 4, article 2, and inquire if the language here employed sustains the view that the proceeding is political exclusively, and if the words "President, Vice-President, and all civil officers of the United States" is designed as an affirmative designation of the persons to whom impeachment can apply. The terminology of the section is peculiar. It authorizes the removal of the persons named upon conviction. It does not declare that no other officers than those named, or that those only, shall be removed. And yet unless the words used are held to be descriptive, then the power conferred in the Constitution must be regarded as to official acts and official persons at least, as broad and comprehensive as that known to the parliamentary law of England. There is no language which forbids the impeachment of the admiral who neglects the safeguard of the sea; the commodore who sinks his squadron; the general who surrenders his army to an inferior foe; the commander who corruptly capitulates his post. And yet it is safe to say that the exercise of such a power by Congress has never for an instant been considered. The words "civil officers" have always been held to exclude naval and military officers, and therefore culprits in those arms of the public service are relegated to courts-martial and other modes of punishment. The state can be as much harmed by their delinquency; in time of war perhaps to a much higher degree than by the misconduct of a civil officer, but they have never been considered subjects of impeachment, because the language of the fourth section has been regarded as an exclusion, as if the word "only" had been inserted after the words "United States."

Why? The occasion has not been absent in our history, but the reason for the abstinence is clear. It has been the application of the old legal maxim: *Expressio unius, exclusio alterius.* The specification

of particulars is the exclusion of generals. Lord Bacon says, and his observation is quoted in this connection by Judge Story with approval, "As exception strengthens the force of a law in cases not excepted, so enumeration weakens it in cases not enumerated." It is true that this rule is not absolute, and that it may be susceptible of wrong application; but it is one of those maxims which are founded in reason and have found their way as well into the affairs of daily life as into the decision of judicial questions. To ascertain how far an affirmative provision excludes others we must look to the nature of the provision, the subject, the objects, and the scope of the instrument. There can be no doubt that in most cases an affirmative declaration excludes everything or person not specified; and the reason is obvious. An affirmative grant or specification would be superfluous and absurd if general authority were intended. (See Story on the Constitution, section 448.) In the case before us if the broad, unrestricted power of impeachment was conferred by article 1, section 2, clause 5, it would include "the President, Vice-President and all civil officers of the United States," and thus article 2, section 4, would be superfluous and illogical, considered either in relation to the persons, the offenses, or the penalty. The greater always includes the less; and if the fourth article of section 1 be not a limitation, a restrictive, affirmative declaration, then the words of which it is composed are ineffectual. They are as idle and empty as the wandering air.

The man who resigns his office becomes at once a citizen. That he has held office makes him no less and no more than a citizen. When the President resigns he is a citizen. When the Vice-President resigns he is a citizen. When all civil officers resign they are citizens. And if they are no longer "civil officers" they are no more liable to impeachment than military or naval officers. Unless this construction is correct, then there is no limitation and the law of impeachment in America is as unrestricted as in England.

In the case at bar, therefore, the respondent, having resigned his office before the proceedings were commenced, was not liable to impeachment. He was a citizen. He was not a civil officer. The motive with which he resigned is not material. It is the fact alone with which we are to deal. Nor do I regard the legal fiction in relation to fractions of a day as having any significance in the case. Were the hour of the resignation and of the impeachment both uncertain, and impossible to be ascertained, it might be just to apply such a rule as would sustain the jurisdiction; but it has no application here.

Should a resignation occur after the respondent was legally before the Senate and on trial, I should have no doubt that the proceedings could continue and judgment of disqualification be properly pronounced.

The conclusions which I have thus reached appear to me to be not only consonant with the plain intent of the framers of the Constitution, but also in accordance with the spirit of popular institutions and the temper of the age in which we live. When the offender can no longer endanger the state he should be consigned to the courts for punishment; and in all cases of doubtful interpretation in the organic law of a popular government it is always safe to construe the power in favor of the liberty of the citizen, rather than in favor of the prerogatives of the State.

Opinion of Mr. Cameron, of Wisconsin,

Delivered May 25, 1876.

Mr. CAMERON, of Wisconsin. Mr. President, without entering upon a general discussion of the questions involved in this case, I will state the conclusions at which I have arrived, and very briefly the reasons which have influenced me in reaching these conclusions.

For a number of years prior to March 2, 1876, William W. Belknap was Secretary of War of the United States.

At the hour of ten o'clock and twenty minutes in the forenoon of March 2 he resigned his said office, by written resignation under his hand, addressed to the President of the United States, which resignation was then and there duly accepted by the President.

After the acceptance of Belknap's resignation, but on the same day, the House of Representatives impeached him for high crimes and misdemeanors alleged to have been committed by him prior to his resignation and while he was Secretary of War. These are the leading facts of the case; and the main question raised by the pleadings and now submitted to the Senate for decision is this, namely: Had the House of Representatives constitutional authority to impeach Belknap after his resignation, and, having impeached him, has the Senate jurisdiction to try him upon such impeachment?

This is a question of the highest importance; not important on account of the accused, but on account of the principle involved and the results likely to flow from its decision.

Two theories of the Constitution in regard to impeachment are maintained.

First. That the provisions which give the House of Representatives the sole power to impeach and the Senate the sole power to try impeachments confer a power co-extensive with that possessed by the British Parliament. That the provision which declares that judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States, &c., is nothing more than a limitation upon the power to punish; and that when section 4 of article 2 declares that "the President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment of, and conviction for, treason, bribery, and other high crimes and misdemeanors," it only declares what the punishment shall be when the person impeached happens to be the President, Vice-President, or a civil officer of the United States.

Second. The other theory is that impeachment, as established and regulated by the Constitution, is intended solely to protect the state against incompetent or corrupt civil officers by their removal from office, and to make such removal effectual, disqualification from holding or enjoying any office of honor, trust, or profit under the United States thereafter.

No other theory has been advanced by any one in this case, and I therefore assume that there is no other theory, and consequently that one or the other of these is the true theory and must be accepted as such.

My colleague [Mr. HOWE] and the Senator from Illinois [Mr. LOGAN] each shows in his well-considered opinion that every English subject at the time of the adoption of our Constitution could be proceeded against by process of impeachment.

It follows, therefore, that if impeachment under our Constitution is as broad as impeachment under the English law, every citizen of the United States, whether he be a civil officer or a private person, can be impeached for any conduct which in the opinion of the two Houses of Congress is a high crime and misdemeanor.

The constitutional provisions in regard to impeachment are in substance as follows:

> First. The House of Representatives * * * shall have the sole power of impeachment. (Article I, section 2.)
>
> Second. The Senate shall have the sole power to try all impeachments. Judgment in such cases shall extend no further than to removal from office, and disqualification to hold office: but the party convicted shall nevertheless be subject to indictment, trial, judgment and punishment, according to law. (Article 1, section 3.)
>
> Third. The President shall have no power to pardon a person convicted upon impeachment. (Article 2, section 2.)

It will be seen that section 2 of article 1 declares in simple but apt words—

> That the House of Representatives shall have the sole power of impeachment.

It is claimed on the one hand that this is a grant of power and on the other that it is merely functional and descriptive. I incline to the latter opinion; but if it be a grant of power, it can be exercised only in the manner and to the extent provided and limited by subsequent provisions of the Constitution.

The other provisions quoted regulate the trial and judgment in cases of impeachment, and this is all they do, all they assume to do. Section 4 of article 2 points out who may be impeached. This section reads as follows:

> The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

I adopt the theory in regard to impeachment that in this country it is a proceeding established and limited by the Constitution; that it is not borrowed from the parliamentary law of England, but is a creation of the Constitution, and consequently is strictly confined to the cases expressly enumerated in section 4 of article 2 of the Constitution. The President, the Vice-President and all civil officers of the United States, and none other, are named as liable to impeachment. It is the officer and not the man who is impeachable.

The term "civil officer" cannot properly be applied to any person except while such person is actually holding a civil office. This is the popular, common-sense construction of the term "civil officer," and it has been the accepted construction in this country for more than three-quarters of a century.

In the Blount case, a person not a civil officer was impeached, and the impeachment was dismissed by the Senate expressly upon the ground that he was not a "civil officer;" he was a citizen of the United States and a Senator in Congress. If it be true that impeachment in this country is as broad as impeachment in England, then the proceeding ought to have been sustained against Blount, because in England, as has been shown over and over again during the discussion, he might have been impeached as a subject of the king or as a peer of the realm.

I am of the opinion, after carefully considering the Blount case, that it is an authority directly in point in this case, and that it is binding upon us so far as an adjudged case is binding upon the same court in subsequent cases.

No person not actually a "civil officer" at the time of impeachment has been impeached from the time of Blount's impeachment until Belknap was impeached.

Investigations into the conduct of judges and of other civil officers with a view to impeachment have frequently been commenced, but upon the resignation of the supposed offender all proceedings were, in every case, at once dropped.

It seems, then, that for nearly a century it has been the understanding of statesmen, judges, lawyers, laymen, that no person in this country except a "civil officer," while actually in an office, was subject to impeachment. We cannot, I think in this case, hold other-

wise without overruling the Blount case and overruling the almost universal opinion held by the American people for three generations. I, for one, am not prepared to do this.

The primary purpose, if not the sole purpose, of impeachment in this country is to protect the Government against incompetent or corrupt civil officers by their removal from office, and, as already remarked, to make such removal effectual, disqualification from holding office thereafter.

Judge Story's Commentaries upon the Constitution have frequently been referred to during this discussion. I think the language used by this learned commentator clearly shows that he was of the opinion that impeachment in this country is limited by the Constitution, and that it is not as broad, as comprehensive, as in England.

At section 803 he uses the following language:

It would seem to follow that the Senate on the conviction were bound in all cases to enter a judgment of removal from office, though it has a discretion as to inflicting the punishment of disqualification. If, then, there must be a judgment of removal from office, it would seem to follow that the Constitution contemplated that the party was still in office at the time of impeachment. If he was not, his offense was still liable to be tried and punished in the ordinary tribunals of justice, and it might be argued with some force that it would be a vain exercise of authority to try a delinquent for an impeachable offense when the most important object for which the remedy was given was no longer necessary or attainable. And although a judgment of disqualification might still be pronounced, the language of the Constitution may create some doubt whether it can be pronounced without being coupled with a removal from office. There is also much force in the remark that an impeachment is a proceeding purely of a political natnre. It is not so much designed to punish an offender as to secure the State against gross official misdemeanors. It touches neither his person nor his property, but simply divests him of his political capacity.

At section 790 he says:

From this clause it appears that the remedy by impeachment is strictly confined to civil officers of the United States, including the President and Vice-President. In this respect it differs materially from the law and practice of Great Britain. In that kingdom all the king's subjects, whether peers or commoners, are impeachable in Parliament, though it is asserted that commoners cannot now be impeached for capital offenses, but for misdemeanors only. Such kind of misdeeds, however, as peculiarly injure the commonwealth by the abuse of high offices of trust are the most proper and have been the most usual grounds for this kind of prosecution in Parliament. There seems a peculiar propriety, in a republican government at least, in confining the impeaching power to persons holding office. In such a government all the citizens are equal and ought to have the same security of a trial by jury for all crimes and offenses laid to their charge when not holding any official character.

It has been conclusively shown during this discussion, and is not now denied by any one, that a civil officer has a legal right to resign, to lay down his office at any time. Belknap possessed this right and he exercised it at twenty minutes after ten o'clock, on the second day of March last. From that moment he ceased to be a civil officer and has since been a private citizen, with all the rights, privileges, and immunities of a private citizen. He was impeached about five hours after his resignation had been duly accepted by the President. When impeached he was a private citizen, and, if it be true that under our Constitution a private citizen is not impeachable, it follows that the House of Representatives had no constitutional power to impeach and the Senate has no authority to try Belknap upon such impeachment.

But it is said that if the Senate do not take jurisdiction of the case Belknap will "go unwhipt of justice." This does not by any means follow. If he has violated any of the criminal statutes of the United States, the courts are open for his indictment, trial, and punishment. The criminal court does what impeachment cannot do; it inflicts punishment by fine, imprisonment, and disqualification.

The precedent which will be established by the decision of this case is of infinitely greater importance to the country than Belknap or his crimes. If the Senate has jurisdiction to try one private citizen upon impeachment, it has a right to try any private citizen by the same process.

In a case of the magnitude and importance of this, if there be a well-founded doubt of jurisdiction, then jurisdiction ought not to be entertained; the doubt ought to be resolved in favor of the liberty of the citizen. This is the only safe course for the Senate to pursue. The country is in no danger from Belknap. He can do it no injury now or hereafter; but it is in danger if the Senate assumes powers not granted to it by the Constitution.

Belknap has been indicted by the supreme court of the District of Columbia. Let him there be tried, and, if found guilty by a jury of his peers, let him be punished as the statute provides by fine, imprisonment, and disqualification. The ends of justice will thus be fully subserved without any strained, doubtful, and consequently dangerous construction of the Constitution.

Opinion of Mr. Bayard,

Delivered May 25, 1876.

Mr. BAYARD. The elaborate and able opinions which have been already delivered by many Senators would make any expression on my part save my recorded vote seem a work of supererogation. Yet, in view of the grave and far-reaching consequences which are embraced in the decision which this Senate sitting as a court shall reach in the case before us, I feel constrained to state in as succinct a form as possible some of the reasons which have led my mind to the conclusion that the Senate has jurisdiction under the Constitution to try William W. Belknap, lately the Secretary of War, for the high crimes alleged in the articles of impeachment to have been committed by him while holding that office, by abuse of the powers of said office, notwithstanding his resignation a few hours before the resolution to impeach him had been actually adopted by the House of Representatives. I do not hold it at all necessary to decide any other case than the one brought before us by the articles of impeachment and the issues of law raised by the pleadings on behalf of the accused party, and therefore avoiding the domain of speculation shall discard from consideration any supposititious case, and address myself to the law as I think it is, and as it is applicable to the precise case disclosed by the record before us.

The Constitution of the United States is the charter of powers which may be lawfully exercised by us in this proceeding. Its provisions are not couched in obscure language, but are expressed in words of ascertained meaning carefully sifted and well weighed by a body of men exceptionally and well qualified to state in the English language what they meant to express and exclude all else. By this Constitution it was provided, in section 2 of article 1:

The House of Representatives * * * shall have the sole power of impeachment.

In section 3, of the same article:

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

In section 2 of article 2:

The President * * * shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

Section 2, article 3:

The trial of all crimes, except in cases of impeachment, shall be by jury.

In section 4, article 2:

The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

These are all and singular the provisions of the Constitution which relate to the subject, to which may be added section 5 of article 1: "Each House may determine the rules of its proceedings." And under rules of this body made and provided for cases of impeachment we have thus far duly proceeded.

The Constitution, as was said by Chief Justice Marshall, is an instrument of grants and inhibitions of power, not of definitions, of which last it contains but one—that of treason, in section 3 of article 4.

It was framed by men of well matured experience acquired in adversity, learned in the science of government, especially in the usages and laws of Great Britain, whose subjects they had so lately been.

The meaning and objects of impeachment as a remedy for crimes against the Government were well known and defined in the books of the common law, with all its properties and incidents.

To the Supreme Court of the United States has frequently been referred the duty of giving interpretation and definition to the words employed in the Constitution, and the language of that tribunal in the case of Murray's Lessee *vs.* The Hoboken Land Company may serve to illustrate the methods of reasoning and sources of information resorted to by them in cases like the present, where a general grant of power touching any subject occurs in the Constitution. The decision related to the true meaning of the words "due process of law," as used in the fifth article of the amendments. And I here cite it as a single, but sufficient illustration, to show to what fountains we should trace these verbal rivulets, in order properly to define and adjust the powers to be exercised under their authority.

The opinion of the court was delivered by Mr. Justice Curtis, who says:

The words "due process of law" were undoubtedly intended to convey the same meaning as the words "by the law of the land" in Magna Charta. Lord Coke, in his commentary on those words, (2 Institutes 50,) says they mean due process of law. The constitutions which had been adopted by the several States before the formation of the Federal Constitution, following the language of the great charter more closely, generally contained the words "but by the judgment of his peers or the law of the land." The ordinance of Congress of July 13, 1787, for the government of the territory of the United States northwest of the river Ohio used the same words.

The Constitution of the United States, as adopted, contained the provision that "the trial of all crimes, except in cases of impeachment, shall be by jury." When the fifth article of amendment, containing the words now in question, was made, the trial by jury in criminal cases had thus already been provided for. By the sixth and seventh articles of amendment further special provisions were separately made for that mode of trial in civil and criminal cases. To have followed, as in the State constitutions and in the ordinance of 1787, the words of Magna Charta, and declared that no person shall be deprived of his life, liberty, or property but by the judgment of his peers or the law of the land, would have been in part superfluous and inappropriate. To have taken the clause "law of the land," without its immediate context, might possibly have given rise to doubts which would be effectually dispelled by using those words which the great commentator on Magna Charta had declared to be the true meaning of the phrase "law of the land" in that instrument, and which were undoubtedly then received as their true meaning.

That the warrant now in question is legal process is not denied. It was issued in conformity with an act of Congress. But is it "due process of law?" The Constitution contains no description of those processes which it was intended to allow or forbid. It does not even declare what principles are to be applied to ascer

tain whether it be due process. It is manifest that it was not left to the legislative power to enact any process which might be devised. The article is a restraint on the legislative as well as on the executive and judicial powers of the Government, and cannot be so construed as to leave Congress free to make any process 'due process of law" by its mere will. To what principles, then, are we to resort to ascertain whether this process enacted by Congress is due process? To this the answer must be twofold. We must examine the Constitution itself to see whether this process be in conflict with any of its provisions. If not found to be so, we must look to those settled usages and modes of proceeding existing in the common and statute law of England before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country.

Tested by the common and statute law of England prior to the emigration of our ancestors, and by the laws of many of the States at the time of the adoption of this amendment, the proceedings authorized by the act of 1820 cannot be denied to be due process of law, when applied to the ascertainment and recovery of balances due to the Government from a collector of customs, unless there exists in the Constitution some other provision which restrains Congress from authorizing such proceedings. For, though "due process of law" generally implies and includes *actor, reus, judex*, regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceedings, (2 Institutes, 47, 50; Hoke *vs.* Henderson, 4 Devereux's North Carolina, 15; Taylor *vs.* Porter, 4 Hill, 146; Van Zandt *vs.* Waddell, 2 Yerger, 260; State Bank *vs.* Cooper, *ibid.*, 599; Jones's Heirs *vs.* Perry, 10 *ibid.*, 59; Greene *vs.* Briggs, 1 Curtis, 311,) yet this is not universally true. There may be, and we have seen that there are, cases under the law of England after Magna Charta, and as it was brought to this country and acted on here, in which process, in its nature final, issues against the body, lands, and goods of certain public debtors without any such trial; and this brings us to the question whether those provisions of the Constitution which relate to the judicial power are incompatible with these proceedings. (Murray's Lessee *et al. vs.* Hoboken Land and Improvement Company, 18 Howard, page 280.)

Mr. Justice Blackstone's renowned Commentaries on English law—and which our own great jurist, Chancellor Kent, has said "filled him with admiration and despair"—were in 1787, as now, the text-book of all students of law in England and the United States. Blackstone described impeachment as "a prosecution of the already known and established law frequently put in practice." And the most prolonged and celebrated trial by impeachment, that of Warren Hastings, ex-governor-general of India, in the course of which everything that the profound study of able and learned men could bring to enlighten the subject had been collected and applied, was pending during the time the subject was under discussion in the constitutional convention which met at Philadelphia in May, 1787.

The institution of impeachment, thus well known, was imported into the Government of the United States, and was perfectly understood in its principles, history, and methods of procedure by the Federal convention, who adopted it as they found it then existing in Great Britain, with such modifications as the republican constitution of government for the "more perfect union" of the States required "to secure the blessings of liberty" to the people of the United States and their posterity.

In No. 65 of the Federalist, Hamilton—than whom no abler expositor of the instrument under consideration ever lived, and who had been a leading member of the convention—said:

A well-constituted court for the trial of impeachments is an object not more to be desired than difficult to be obtained in a government wholly elective.

The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated (Page 491.) What, it may be asked, is the true spirit of the institution itself? political, as they relate chiefly to injuries done immediately to society itself. * * * Is it not designed as a method of national inquest into the conduct of public men? The model from which the idea of this institution has been borrowed pointed out that course to the convention. In Great Britain it is the province of the House of Commons to prefer the impeachment, and of the House of Lords to decide upon it. Several of the State constitutions have followed the example. As well the latter as the former seem to have regarded the practice of impeachments as a bridle in the hands of the legislative body upon the executive servants of the government. Is not this the true light in which it ought to be regarded?

And in No. 66, the same great authority, treating of the same subject, says:

An absolute or qualified negative in the Executive upon the acts of the legislative body is admitted by the ablest adepts in political science to be an indispensable barrier against the encroachments of the latter upon the former. And it may, perhaps, with not less reason, be contended that the powers relating to impeachments are, as before intimated, an essential check in the hands of that body upon the encroachments of the Executive.

Mr. Jefferson, although not a member of the constitutional convention, was a contemporaneous expositor of the Constitution, and his Manual of Parliamentary Practice, which to-day is one of our leading authorities, in its title "Impeachment," contains abundant evidence in its cifations that he accepted the English precedents as authority on this subject. (*Vide* section 53, *passim*.)

These references to contemporaneous authority will, I think, be accepted as proof, if proof were necessary, to show how fully acquainted with the subject, were the framers of the Federal Constitution. It would be an idle parade to repeat the history of precedents and practice in impeachments in England up to the time of the importation of this institution into the Government of the United States.

Said Chief Justice Marshall, in United States *vs.* Wilson, 7 Peters, South Carolina:

The language used IS OUR LANGUAGE, and of a nation to whose judicial institutions ours bears so close a resemblance.

The grants of this power to each House of Congress respectively, are general grants, as explicit, clear, and emphatic as words can create: "sole power" to the House to accuse; "sole power" in the Senate to try "all impeachments." For the sake of justice the accusers and the judges are never the same persons, and the concurrence required of two-thirds of the judges gives additional security to innocence. It is a great check upon misconduct in the executive branch, and therefore the power of impeachment and conviction is placed as far as possible beyond the influence of or interference by the executive branch or any member thereof. The presidential power of veto, therefore, does not extend over the resolution of the House to impeach or the judgment or resolution of the Senate to convict or acquit.

The trial shall not be by jury, so that none of the official machinery—for the prosecution of crime in the courts—controlled by the executive, can be called into operation; and finally, the power to grant reprieves and pardons for offenses against the United States, expressly excepts cases of impeachment. Any construction of the constitutional provisions relating to the subject which would have the result of bringing any impeachable offense under the control of the Executive Department of the Government, would violate the very evident object for which this great and "essential check" was confided to the two Houses composing the legislative branch, and imperil if not destroy its efficiency. Thus, if the President can by removal of an official deprive the House of Representatives of its power to impeach and the Senate of its power "to try all impeachments," he may not only shelter a dangerous enemy and treacherous public servant from the penalty of disqualification ever to hold office, but, having control over the officials whose duty it is to prosecute offenders before the judicial branch, he can practically prevent the trial of the criminal in the courts or, if in his discretion he permits the prosecution to proceed, he can by a pardon totally relieve the criminal from all legal punishment for his guilt.

It is therefore essential, in order to maintain that independence which by the Constitution it was designed should be secured to the two Houses of the Congress in their exercise of this great and "sole" power of impeachment, that under no construction should their jurisdiction or method of proceeding be subjected, directly or indirectly, in any degree to the action or influence of the executive branch.

It is the national self-protection against executive encroachments or malfeasance, and in its initiation and enforcement must carefully be kept out of the domain of executive power or control, for the correction of whose wrong it was especially designed. If then the power of the two Houses of the Congress is to be maintained without interference or influence on the part of any officer of the executive branch, what shall be said of that construction of the Constitution which gives to the guilty official himself the power at will to keep himself within or place himself without the jurisdiction of the two Houses of Congress, and submit to be impeached only with his own consent?

It is difficult with a grave face to state the proposition that a culprit shall not only raise the question as to the jurisdiction of the tribunal assuming to try him, but decide the question himself at his own will and pleasure, carrying his discharge in his own pocket, to be produced at will, as in the present case was sought to be done by a resignation, on the very stroke of the hour when the resolution to impeach him was about to be adopted by the House of Representatives; in other words, that a plea to the jurisdiction of a court is to be settled, not by the law and facts as they existed at the time of the commission of the offense, but is to be decided by the accused party, and not by the court—is to be always subject to the willingness of the accused to be tried at all.

To admit such a proposition in a case like the present would lead to this result: that any guilty official being, as almost invariably is the case, the sole custodian of the proofs of his own misconduct, and having by virtue of the powers of the office he was betraying the very means and the only means of concealment, should keep concealed not only his guilt but all means of its detection, until the expiration of his term or his resignation at any time convenient to himself, and should then leave the office vacant and for the first time open to inspection; that he should in violation of every principle of law and justice be suffered to take advantage of his own deliberate wrong; be enabled to change an unpardonable offense to one within the power to pardon given to the President.

The high crime and misdemeanor of which W. W. Belknap has been impeached is an offense against the whole people of the United States; it is a "public offense" in the strongest, fullest sense of the word.

It is not doubted that the crimes alleged in the articles of impeachment are "high crimes" and impeachable under the Constitution—it is admitted under the pleadings as they now stand, and for the purpose of deciding the question before us, that Belknap, while Secretary of War, and by the corrupt use of his power as Secretary of War, did commit high crimes—the offense being nothing less than the sale for money, of post-traderships, criminally disregarding his duty as Secretary of War, and basely prostituting his high office to his lust for private gain, to the great damage and injury of the officers and soldiers of the Army of the United States as well as of emigrants, freighters, and other citizens of the United States, against public policy, and to the great disgrace and detriment of the public service.

But it is argued in his defense that, having removed himself from the office by his own act of resignation, which act, although promptly assented to by the President of the United States, is not thereby enforced or weakened in its legal results *as to him*, (Belknap,) he is *ipso facto* beyond the jurisdiction of the Senate, and that the judgment expressly authorized by the Constitution of "removal and dis-

qualification from holding any office of honor, trust, or profit" under the United States cannot be entered and enforced against him.

Can it be that a person charged with crime can thus at will place himself within or without the range of judicial authority?

The judgment of disqualification to hold and enjoy any office under the United States would seem to contain in itself the removal of an incumbent, because it forbids the party convicted to hold or enjoy *any* office, therefore, *in presenti as well as in futuro*. The final consummation of long-contemplated crime could be postponed until the last hour of his official term, until just enough of official power remained to make guilt successful, yet not enough to compel it to respond to the demands of justice.

The train could be laid and the slow-match lighted with close calculation, and the incendiary retire to the place of safety outside the jurisdiction charged with his punishment.

"Removal" from the particular office then held, on the contrary, does not include disqualification thereafter to hold some other office or offices, or the same office for another term. If, as has been argued, removal was the sole object of impeachment, then, that once accomplished, the more serious and enduring part of the judgment authorized by the Constitution could never be executed, because no officer, *i. e.* person holding office, existed upon whom this portion of the sentence could operate.

As reasonably could it be said, that because in the verbal arrangement of the Constitution the word "removal" precedes "disqualification," the rendition of removal, being the first part of the judgment, would make it impossible to proceed any further.

But the Constitution in the clauses conferring jurisdiction in cases of impeachment (article 1) does not require "an officer" or person in office to be the subject of the judgment of the Senate. The individual under impeachment is termed in one clause "a person," in another "a party," and in the enumeration of the classes whose removal from offices upon conviction for certain offenses is made imperative we find "the President of the United States, the Vice-President, and all civil officers." So that nothing in the Constitution expressly or impliedly requires the party against whom judgment of the Senate of disqualification is rendered to be in office at the time of trial or conviction.

Upon what principle of reasonable construction, may it be asked, shall the judgment of the Senate not extend so as to embrace disqualification of the guilty party to hold office?

The Constitution gives the power in plain words: "The judgment shall not extend further." That is, it may extend so far as to remove and disqualify—*omne majus in se continet minus;* if the judgment may include both removal and disqualification, it may exclude either or both, except as provided in section 4, article 3.

It is clearly in the power of the Senate in passing judgment to proceed to the outer boundaries of the power so granted, or stop short at any point within it.

In the historical view of the usage and practice of impeachmentsin the country from which we have derived the institution, no case has appeared of which I have knowledge wherein the power to impeach and try an ex official for an offense impeachable when it was committed, was ever denied or questioned. Such was the admitted and frequently-exercised power of the British House of Commons up to and at the time of the importation of the institution of impeachment into the Government of the United States, and when the corresponding branch of the Legislature under our system—the House of Representatives—was invested with the general jurisdiction of the subject by the grant to them of the "sole power of impeachment," while to the Senate was confided the "sole power to try all impeachments."

Taking the law and usages of impeachment as they found it in the mother-country, the founders of our Government proceeded to mould it into harmony with the new and more liberal system they were seeking to establish. They made certain important changes in the way of restriction and also by enlargement of the relative powers of the legislative bodies, respectively accusatory and judicial.

And it is safe for us to assume as a canon of criticism upon this part of their work that, wherever they did not expressly or by the most necessary implication change the law and practice of impeachment as it then existed in Great Britain, they intended to maintain it as it then was, unimpaired in all its features.

Let us notice the changes expressly made.

In Great Britain the monarch could not be impeached.

In the United States the chief of the executive branch, the President of the United States, was made liable to be impeached.

In Great Britain the royal pardon, although not pleadable to abate impeachment, could relieve against all penalties of impeachment, and thus absolve the offender at the will of the king.

In the United States the power of the President to pardon was not permitted to extend to cases of impeachment.

In Great Britain the judgment of the House of Lords was limited in its nature and, extent, only by their discretion.

In the United States the judgment of the Senate was forbidden to extend further than removal from office and disqualification to hold office.

In Great Britain a trial and conviction on impeachment could be pleaded in bar of a second trial for the same offense.

In the United States it was expressly provided that judgment of conviction on impeacament should not operate as a bar to trial and punishment at law.

In Great Britain a bare majority of the peers was sufficient to convict.

In the United States two-thirds of the Senators present were required to concur in a judgment of conviction.

Bills of attainder and *ex post facto* laws, species of public remedy of great antiquity and frequent recourse, well known in parliamentary prosecutions in Great Britain, were expressly forbidden by section 9 of the first article of the Federal Constitution.

Thus we find the founders of our constitution of government did carefully consider and weigh all the features of the English institution of impeachment as it then existed, with careful reference to the scope of powers and their adaptation to the new Government they were arranging; and it seems to my mind a necessary consequence for our acceptance that, except as they expressly altered and amended it, it now remains and must duly be exercised by the House of Representatives and the Senate of the United States.

Upon what presumption of reason or justice, by what allowable construction can we decide that the House of Representatives or the Senate of the United States are to be deprived of their respective powers to impeach and to hear and determine impeachments in cases where the guilty party who committed high crimes when in office has gone out of office by resignation before the resolution to impeach him has been adopted by the tribunal possessing the "sole power?" Such power did confessedly belong to the impeaching power of the government from which we imported the institution and was there frequently exercised and never in any case questioned. By what authority can we subtract this important feature of that power which our fathers left untouched within the jurisdiction they delegated to the two Houses of Congress?

When the first case of impeachment under the Federal Constitution occured—that of Blount, a Senator from the State of Tennessee who had been expelled from this body—the question of jurisdiction arose, and was in substance confined to the issue whether a Senator of the United States was a civil officer of the United States or the officer of a State, and the decision was that he was not a civil officer of the United States within the meaning of the Constitution, and therefore not liable to impeachment by the House of Representatives. But in the course of that ably-argued case it was stated by the prosecution and admitted by the counsel for the defendant that a party could not escape impeachment for crimes committed while in office by resigning his office.

Mr. Bayard said:

It is also alleged in the plea that the party impeached is not now a Senator. It is enough that he was a Senator at the time the articles were preferred. If the impeachment were regular and maintainable when preferred, I apprehend no subsequent event grounded on the willful act, or caused by the delinquency of the party, can vitiate or obstruct the proceeding. Otherwise the party, by resignation or the commission of some offense which merited and occasioned his expulsion, might secure his impunity. This is against one of the sagest maxims of the law, which does not allow a man to derive a benefit from his own wrong.

Mr. Dallas, for the defendant, said:

There was room for argument whether an officer could be impeached after he was out of office; not by a voluntary resignation to evade prosecution, but by an adversary expulsion.

Mr. Ingersoll, for the defendant, said:

It is among the less objections of the cause that the defendant is now out of office not by resignation. I certainly shall never contend that an officer may first commit an offense and afterward avoid punishment by resigning his office; but the defendant has been expelled. Can he be removed at one trial and disqualified at another for the same offense? Is it not the form rather than the substance of a trial? Do the Senate come, as Lord Mansfield says a jury ought, like blank paper, without a previous impression on their minds? Would not error in the first sentence naturally be productive of error in the second instance? Is there not reason to apprehend the strong bias of a former decision would be apt to prevent the influence of any new lights brought forward upon a second trial.

In the light, then, of history, the record of decisions, and examination of the plain provisions of the Federal Constitution, how can we doubt that the power to impeach a man, when out of office by his own resignation for high crimes committed by him when in office, was not subtracted from the general grant of power over the subject which our fathers so deliberately placed in the Constitution?

I do not consider it necessary to repeat the cumulative evidence in support of the views I have stated, which is contained in the report by Mr. Madison of the debates in the convention which framed the Constitution. They have been too often referred to by the managers on the part of the House and in the opinions delivered in this body to make further citation needful. Nor do I reproduce the illustrations or restate the arguments already drawn so well and elaborately from the constitutional provisions of the States of Delaware, Pennsylvania, Virginia, and others, expressly giving the power to impeach men when out of office for crimes committed by them when in office.

Does it not seem a most unusual construction to give to an express limitation upon a power the effect of an enlargement, and to hold that when a State constitution has expressly limited impeachment to two years after the party accused has ceased to hold the office in which he was guilty of misconduct, it therefore implies that no power so to impeach would have existed but for the limitation?

Jurisdiction on the subject is not conferrd by the fourth section of the second article of the Constitution, which is a mere cautionary addition to the provisions of article 1 by making removal from office imperative in certain enumerated cases and for certain offenses, but in no degree and not even by remote implication impairing or restrict-

ing or qualifying the general grant of jurisdiction before contained to the House of Representatives of the "sole power of impeachment," and to the Senate of the "sole power to try all impeachments." And in Blount's case such was the view stated on the part of the House of Representatives, and not dissented from by counsel for the defendant.

Mr. Bayard said:

> The use of the law of impeachment is to punish and thereby prevent offenses which are of such a nature as to endanger the safety or injure the interest of the United States; and the object of the Federal Constitution was to provide for that safety and to protect those interests. Such offenses may be committed as well by persons out of office as by persons in office; and although the punishment can go no further than removal and disqualification, which restriction was perhaps wisely introduced in order to prevent those abuses of the power of impeachment which had taken place in another country, yet it may often be extremely important to prevent such offenders from getting into office as well as to remove them when they are in; and it is therefore as consistent with the policy of impeachments and the principles of the Federal compact to punish them in the one case as in the other.
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> The learned counsel for the defendant have adduced many of the State constitutions to show that the States have in their own constitutions restricted the power of impeachment to official persons and official offenses; from whence, according to them, it ought to be inferred that the States, in ratifying the Federal Constitution, intended that the power of impeachment which it contains should be restricted in the same manner. But, Mr. President, I cannot discern how this inference is warranted. The very contrary I should suppose ought to be inferred. It must be remembered that in the State constitutions the power is expressly limited; and that terms are employed very different from those to be found in the Federal Constitution. This proves that where the States intended to limit the power, as in their own constitutions, they employed express words for that purpose; from whence it may surely be inferred that when they took the Federal Constitution, without any such express words, they intended to take the power of impeachment alone with it, without any such limitation. It must also be remarked, that the convention which framed the Federal Constitution was composed of members from each State, who must have understood their own State constitutions, and the limitations on this subject which they contain. Had they intended to limit the power of impeachment in a similar manner, they would no doubt have done it by express words, as in their respective State constitutions.—*Annals of Congress*, Fifth Congress, vol. 2, pages 2299, 2300.
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> The Constitution has said who shall have the power to impeach and who of trying impeachments. It has also limited the extent of the punishment. But it has not described the persons who shall be the objects of impeachment, nor defined the cases to which the remedy shall be confined. We cannot do otherwise, therefore, than presume that upon these points we are designedly left to the regulations of the common law. Sir, in the very threshold has not this law given us the foundation upon which we stand? Where have we looked for the form of the pleadings which has brought the present question before the court? And if, sir, a question of evidence should arise, as happened upon a former occasion, should we hesitate as to the law which ought to determine its competency? If we were asked whether a greater looseness in pleadings on impeachment were not allowed than in suits at law, we should answer in the affirmative; and if it were inquired whether the rules of evidence were more lax, we should answer in the negative; and in such opinions I trust we should not be contradicted by the learned counsel of the party impeached; and yet, sir, the opinions could alone be collected from the rules of the common law.
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> It is perhaps worthy of observation that even as it regards those persons who are clearly liable to impeachment, there is no direct provision which subjects them to it. Thus, in the fourth section of the second article, which has the closest connection with the point. It has not said President, Vice-President, and civil officers, shall be liable to impeachment; but, taking it for granted that they were liable at common law, has introduced an imperative provision as to their removal upon conviction of certain crimes.—*Annals of Congress*, Fifth Congress, volume 2, page 2253.

Indeed, it would seem necessary to sustain the proposition that the jurisdiction of the Senate to try an impeachment depended upon the resignation or retention of his office by the alleged offender, at his own will, that clauses giving sole power to the House to impeach should be supplemented by the words "provided the party accused is willing to be impeached."

Such would be the effect of sustaining the defendant's plea in the case before us. The pleadings before us disclose an impeachable offense to have been committed, which I have heretofore described, using the language of the articles of impeachment:

That, having thus committed an impeachable offense, the said Belknap resigned his office, and on the same day, and after the lapse of a few hours, the House of Representatives, upon report of one of its standing committees, who for several days previous had taken cognizance of the offense, and been engaged in taking testimony, adopted a resolution to impeach him. This impeachment has been duly and formally presented by the House to the Senate, who, sitting as a court duly organized under oath, now consider the same, after full argument by the managers on the part of the House and counsel on behalf of the defendant.

Any argument of the danger of this proceeding to the safety and rights of individuals is just as applicable to persons in office as to persons out of office. Oppression and injustice are just as probable and as much to be dreaded by office-holders as ex officials. The incentives and motives to such action would be the same in the case of one as the other. Indeed the desire to remove an opponent from his office might well constitute the sole incentive.

Shall the crime be punished; and who shall be subjected to the penalty? Of the identity of the guilty person there is no question. The offense remains "unwhipt of justice;" and must it remain so forever? And must the American people be deprived of the protection against the possibility of repetition of this crime against them and their Government by this same party because he has resigned the office since his commission of the offense and immediately upon its detection? This would be to deny justice; and yet "to establish justice" was one of the declared objects for which the Constitution we have sworn to support was ordained and established.

The proceedings by way of impeachment are not adapted for ordinary offenses or ordinary officials. It is an extraordinary proceeding to meet extraordinary offenses, especially dangerous to public welfare and safety.

The best and most justifiable object of public punishment is to prevent repetition of offenses by making public examples. The end sought is justice, not vengeance; to protect society, and not merely inflict suffering on the criminal.

The proceeding is too cumbersome, dilatory, and expensive to be lightly undertaken.

Mr. Justice Blackstone styles it "the trial of great and enormous offenders, whether Lords or Commons, * * * by the most solemn grand inquest of the whole kingdom."

The two great bodies of the Federal Legislature could not in the nature of things find time for frequent trials of this nature to the necessary exclusion of their legislative business. It is only in such cases as the present, when a great public example in the trial and punishment of a great public offense is believed by the body having the "sole power" of impeachment, to be needed for the public safety, for the protection of the integrity of the Government, then, when this high discretion has been exercised by the department of the Government having the sole power, in a case like the present, presenting an impeachable offense committed by a person clearly impeachable when he committed it, I cannot doubt the power and duty of the Senate to take jurisdiction and proceed regularly and duly to the hearing and determination.

It is my judgment that the plea of the accused to the jurisdiction of the Senate be overruled.

Opinion of Mr. Boutwell,

Delivered May 25, 1876.

Mr. BOUTWELL. Before proceeding to a statement of the case I venture to submit to the Senate some general considerations upon three topics connected not remotely with the question before us. It is worthy of observation that for nearly a century all classes of persons, the learned and the unlearned, commentators and students, rested in the belief that there was no authority in the Constitution of the United States for the impeachment of a private person.

It is also true that nothing has come to us of the sayings or the doings of the men who framed the Constitution, either in the report of the debates in the convention or in the words of the authors of the Federalist, which justifies the concluion that the eminent men concerned were of opinion that the instrument which they had formed and were advocating before the people contained the power which is now claimed for it by friends of jurisdiction in the case before the Senate.

I think it is also true that when the question was first raised in the the Senate and brought authoritatively to the notice of the public not a third of the Senate nor a third of the jurists in the country entertained the belief that there was any substantial argument or valid authority for the claim put forth; and it is only by ingenious discussion that support has been found for the position thus unexpectedly taken.

Much stress has been placed upon the circumstance that under the Constitution, if jurisdiction be denied, the President, the Vice-President, or any civil officer charged with crime or misdemeanor justifying impeachment, may escape the jurisdiction and judgment of the Senate by merely laying down his office; and the question is put with significance, and in the estimation of many I doubt not with force, Can it be possible that the Constitution has left it for the accused to decide for himself whether he shall submit to jurisdiction and trial or not? This question assumes in a large degree that the proceeding before the Senate is for the punishment of the accused, and the force of the inquiry is due entirely to this suggestion; but its value diminishes when we accept the doctrine that the sole object is the removal of an unworthy official from office. If the Senate will consider another feature of the Constitution, surprise at the alleged want of power to try a civil officer who has been accused of an impeachable offense after his resignation will wholly disappear.

The members of the Senate and House occupy a more important relation to the people of the country than that occupied by any mere civil officer. In this statement I exclude the President and Vice-President, for according to the Constitution, as well as upon the judgment of eminent commentators, the President and Vice-President are not civil officers. The statement I make in regard to the relation of Senators and Representatives to the people of the country is warranted by the opinion of the Supreme Court, and it is in accordance manifestly with the theory and reading of the Constitution. Senators and members of the House are a part of the Government itself, and not its mere agents. As a whole, they constitute the Government for all legislative purposes. The President has only the constitutional faculty to concur or to refuse to concur in the action of Congress; and his refusal even can be overcome by a two-thirds vote. It may therefore be said with a large degree of truth that the two Houses of Congress constitute the Government of the country. We can imagine that the chairman of an important committee, as the Ways and Means in the House or the Finance Committee of the Senate, might be corrupted, and through his influence and his capacity to control the legislation of the country he might so shape its policy

that its revenues would be greatly diminished, not for a single year, but for a long period of time. An offense of this sort, if you can draw a line between heinous crimes that closely resemble each other, is of a darker hue than the mere acceptance of a bribe by a civil officer. It is the corruption of the Government at its source, and in such a manner that the means of raising public revenue and maintaining the public credit would be seriously diminished. The only remedy in a legislative sense is the power of each House to expel a member by a two-thirds vote, the party accused being subject afterward to trial in the criminal courts of the country. But it is perfectly well known, and we have had examples and illustrations of the fact, that a Senator or Representative so accused, even after the calling of the roll commences upon the question of expulsion, may lay upon the table the evidence of his resignation, and the power of the House or Senate to proceed further is at an end. This is precisely analogous to the power of a civil officer to lay down his office after articles of impeachment have been preferred, he being then subject, as would be a Senator or Representative accused of a similar crime, to trial and punishment in the courts of the country.

I have next to say that the question of convenience deduced from results, whether only apprehended or clearly foreseen, likely to flow from the rule established by the Senate in this case should have no bearing upon our judgment. We are not engaged in making a constitution, but in interpreting one. If we were engaged in making a constitution the arguments and statements would be entitled to weight; but, as we are construing a Constitution already prepared and obligatory upon us, our power is limited to an honest examination and interpretation of what it contains.

It is claimed by the advocates of jurisdiction that under the clauses of the Constitution so often quoted, "the House shall have the sole power of impeachment" and "the Senate shall have the sole power to try all impeachments," the power of impeachment vested in the two Houses of Congress is precisely that possessed by the Commons and Lords of England at the time the Constitution of the United States was adopted except so far as that power may have been limited in the Constitution itself. It is further alleged that as to jurisdiction of persons there is no limitation in the Constitution of the United States, the fourth section, second article, being merely a specification of the particular penalty which shall be applied to the President and Vice-President and all civil officers of the United States, but working no limitation of jurisdiction as to other classes of persons.

If this doctrine be true, the people of the United States are necessarily divided into three classes with reference to their liability to impeachment: First, all private persons—that is, persons who have never held any office or place of trust under the Government of the United States; secondly, the President, Vice-President, and all civil officers, being the parties mentioned in section 4, article 2; and, thirdly, all other officers of the United States and all persons who have held any office under the Government of the United States, whether military, naval, or civil.

As regards the first class, it is contended by those who now favor jurisdiction that they were never liable to impeachment in Great Britain under what is called the common law of Parliament. I think it must, however, be admitted that this position is not supported by the facts within our reach.

Mr. Wooddeson in his lecture upon impeachment asserts that "all the king's subjects are impeachable in Parliament." We know that many private persons were impeached, but what is more conclusive is the fact that the Commons and Peers asserted uniformly for five centuries their unlimited power in cases of impeachment. They recognized no law but their own will, allowed no restraint but their own judgment, and in more than one case refused utterly to receive the opinion of the law lords as binding upon the Commons or the Peers in their judicial capacity.

Mr. Burke in his exhaustive report of 1794 establishes two features in the practice of the British Parliament in cases of impeachment: First, although there were many precedents, that a system of practice could not be deduced from them, and, secondly, that Parliament did not recognize the binding force of precedents, but claimed that in every case they could proceed upon their judgment as to what was lawful, whether as to persons, offenses, or penalties. At most it can only be claimed by those who maintain that the House and Senate have a jurisdiction under the Constitution of the United States corresponding to that exercised by the Parliament of Great Britain, that the question is unsettled whether or not all the citizens of the United States are subject to impeachment by the House and trial by the Senate.

As regards the second class, all are agreed that they are liable to impeachment, there being some difference of opinion however as to the true construction to be given to the phrase, "And all civil officers of the United States."

The third class are clearly liable to impeachment, if what is called the common law of Parliament has been imported bodily by the Constitution of the United States and incorporated into our system.

Nothing is better established in the history of Great Britain than the fact that officers of the Army and of the Navy were the most common subjects of impeachment. It is, then, the claim of the friends of jurisdiction that the common law of Parliament in regard to impeachment has been imported into this country, and that under that law all military and naval officers and all persons who have held any civil office or any trust under the Government of the United States are subject to impeachment.

In addition to this, if the rule be established, the possibility remains that, upon the authority of the British precedents and the opinions of British writers upon the subject, all private persons will be held as subjects of impeachment in the United States. In England impeachment was a proceeding for the punishment of crimes, and a trial, conviction, and judgment by the House of Peers could be pleaded in bar in the criminal courts; and much of the argument, especially that of convenience, turns upon the question whether in this country the proceeding is for punishment or only for the safety of the state. That it is not for the purpose of punishment is shown by two articles of the Constitution. Article 1, section 3, part 7, declares that the party convicted "shall be liable and subject to indictment, trial, judgment, and punishment according to law." If judgment in case of conviction on articles of impeachment be a punishment, then it follows that by the Constitution a person may be punished twice for the same offense, which is so inconsistent with the theory of our Government and the practice under it that there is no ground for the maintenance of such a doctrine.

Further, if impeachment be a punishment, then the process itself disappears absolutely in the presence of the sixth amendment to the Constitution, which declares that "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed."

These provisions justify the most explicit statement that impeachment is for the safety of the state, and not for the punishment of the criminal; and the inference from this is that it cannot have been the intention of the framers of our Government to import by construction the British system, which was rather for the punishment of crime than for the protection of the state against official corruption or maladministration in office. In trial by impeachment in the United States, crime is alleged, not for the purpose of convicting and judging the accused for the crime, but the crime is alleged and proofs are offered for the purpose of showing that the party accused is not worthy to hold office.

It has been held by the Supreme Court and accepted by jurists and students that the common law of Great Britain, by which the rights of the people generally in civil and criminal affairs were ascertained, was not imported into this country. That system which our fathers rejected as inapplicable in America as a national system was the growth of centuries and the work of a long line of able lawyers and jurists until it reached that condition when it was entitled justly to the encomium of being "the perfection of human reason." But it is now gravely asserted on the other hand that the parliamentary law in regard to impeachment, which was not even a system, but a succession of precedents from which no rules of action had ever been deduced, the product of political hostilities and personal animosities, was transported bodily into and made a part of the supreme law of the United States. Is it probable that, having rejected the system of common law applicable to the affairs of the people generally, a system so perfect that but few modifications or improvements have since been made, they would have accepted a law in regard to impeachment which did not deserve even the name of a system?

But it is said in effect by those who maintain jurisdiction that although the law of Parliament has been imported into the United States and governs in all cases of impeachment by the House, the system itself, as it existed in England, is so bad that the Representatives of the people of the United States will not act upon it except in a few cases of supreme importance. No one can be responsible for this; and so long as the passions of men shall be the chief agents in political affairs, it may be assumed that, the law being given, cases will be found.

Until now the suggestion has never been made that it was in the power of the House to impeach or in the power of the Senate to try either military or naval officers. By the Constitution the President is Commander-in-Chief of the Army and Navy, and by virtue of that authority it is his exclusive province to select commanders in the field; but if the doctrine now advocated be established it will be in the power of the House of Representatives and the Senate by impeachment to remove an officer from his command, thus violating, as it seems to me, one of the chief prerogatives of the President under the Constitution.

Those who deny the broad jurisdiction claimed under the British law do so upon one of two grounds, either of which, as it seems to me, is entirely tenable. If it be assumed that the clauses before quoted, "the House shall have the sole power of impeachment," and "the Senate shall have the sole power to try all impeachments," are jurisdictional clauses, they give to the two branches that power, and that power only, which can be found in the Constitution.

The other theory is that they are functional clauses merely specifying the branch of the Government in which the charge of impeachment is to originate and the branch of the Government in which the charge is to be heard and decided, and that the jurisdictional power is contained in the fourth section of the second article. In either case the result as to the measure of power is precisely the same. If the fourth section of the second article is the jurisdictional one, then the House and Senate can take just that power and that only which is granted by the section. If, further, as is manifestly true, the

section does specify particular persons and a class of persons to whom the power of impeachment is applicable, unless other persons or classes of persons are named or specified in the Constitution to whom the general power claimed is also applicable, then the power itself is limited to those specified in the section referred to. This is manifest upon many grounds. In the Constitution words of inclusion, whether the words relate to a grant of power, to a liability, to a penalty, or to the imposition of a duty, are words of exclusion also. The power is granted or the liability or duty is imposed upon the persons named, and nothing is to be assumed by or for any one else. The words of the fourth section, second article, are specific in this particular. They provide that the President, the Vice-President, and all civil officers of the United States shall be liable to impeachment; therefore sufficient is found to which the endowing clauses or the functional clauses of the Constitution can be applied, and we need not seek by implication or construction, or by the importation of powers from the law of Parliament to find other subjects for the application of the same clauses.

The executive and judicial branches of the Government under the Constitution are distinct from the legislative in one important particular. The executive and judicial branches can take and exercise that power only for which specific authority is given in the Constitution or the laws. Nothing can be taken or assumed by implication or construction. This view recognizes a check upon every branch of the Government. The executive and judicial branches can take nothing by implication or construction; and in case the legislature shall exceed its constitutional power the judicial branch can annul its acts. Hence, it follows that the Government in all its parts is practically as well as in theory a Government of limited powers. The legislative branch of the Government is endowed with power, by article 1, section 8, and paragraph 18—

> To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States or in any Department or officer thereof.

The Senate is not now acting in its legislative capacity, but its functions are entirely judicial, and, being judicial, we are obedient in this respect to the law which applies to the judicial department of the Government in its other branches. It is, therefore, incumbent upon those who claim that the Senate has jurisdiction over a private person, whether he has held office or not, to find in the Constitution specific authority for the power which they propose to exercise. Article 10 of the amendments to the Constitution enforces this doctrine with great clearness:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The Senate in the matter of jurisdiction represents the United States, and we cannot exercise jurisdiction if we observe the tenth amendment, unless we can find the power delegated to the United States by the Constitution. It is not assumed by any one that that power is an expressed power. If exercised at all it is to be exercised only upon the theory that indirectly and by implication the whole of the law of Great Britain on the subject of impeachment has been imported into the Constitution by the general terms "The House shall have the sole power of impeachment" and "The Senate shall have the sole power to try all impeachments."

In concluding this part of my argument I submit, with great confidence, that inasmuch as persons and a class of persons are mentioned and specified in section 4 of article 2 as subject to impeachment, and as no other persons are specified or mentioned in any other part of the Constitution, and as these persons and classes are adequate subject-matter to which the endowing clause of the Constitution can be applied, the attempt to extend those clauses and to include thereunder the law of the British Parliament is a construction of a written constitution so broad in its character and so dangerous in its consequences that it ought not to be accepted either by the Senate or by the country.

It has been said in the course of the debate that section 4, article 2, is mislocated, and that if it had the meaning which the opponents of jurisdiction give to it, it should have been placed under section 3 of article 1; and this view is in some degree sanctioned by a remark made by Mr. Justice Story. An examination of section 3, article 1, shows that the chief object of that section was to furnish rules for the government of the Senate, and that it does not anywhere contain a grant of power:

> The Senate of the United States shall be composed of two Senators from each State. * * * They are to be divided into three classes. * * * No person shall be a Senator who shall not have attained to the age of thirty years. * * * The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.
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> * * * The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice-President.

These are rules of conduct rather than grants of power. Following these provisions in the same section and connected with them, it is declared that—

> The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.
>
> Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

These provisions in regard to impeachment seem to me to be also rules of conduct rather than grants of power, and if nowhere else in the Constitution were there to be found operative words or grants of power these provisions would be wholly without force or value.

The fourth section of article 2 declares that—

> The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

This section is either declaratory that the officers named are subject to impeachment, and of necessity all other persons are excluded, or it is a grant of power in the sense of being a jurisdictional clause, and in that case as well it works the exclusion of every other officer or person from the liability therein imposed upon the officers specified and enumerated. In either view it is to be construed strictly. It includes the President, Vice-President, and all civil officers of the United States as subjects of impeachment, and upon the construction for which I have contended no person can be impeached except he come within the enumerations of this section. The section speaks of the President in office, of the Vice-President in office, and of all civil officers of the United States as those who are in office, and it does not speak of others. It has been contended that any person who has held the office of President, or of Vice-President, or who has been a civil officer of the United States, can be proceeded against by impeachment under this section upon the ground that he was President or was Vice-President or was a civil officer at the time the offense was committed.

It has been said by Chief Justice Marshall and quoted by several Senators in this debate that there is but one definition, that of the word "treason," to be found in the Constitution. From this statement I dissent. There are two modes of defining words: one is by a description of a word by the use of other words, as in the case of the definition of "treason" in the Constitution; but a more accurate definition of a word can be reached by the use and the repetition of the use of it in the same paper or document and in relation to the same subject-matter. In article 2 of the Constitution the words "the President" are used several times and in relation to different duties and powers imposed or conferred on the President and always with reference to the person in office, to the person holding the office of President.

> The executive power shall be vested in a President of the United States of America.
>
> No person except a natural-born citizen or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President. * * *
>
> In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President. * * *
>
> The President shall, at stated times, receive for his services a compensation. * * *
>
> Before he enterd on the execution of his office he shall take an oath or affirmation. * * *
>
> The President shall be Commander-in-Chief of the Army and Navy. * * *
>
> The President shall have power to fill up all vacancies that may happen during the recess of the Senate.

And in the same article the phrase—

> The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

It is a great latitude in construction to assume that in the same article of the Constitution the words "the President" are used four or five times as having reference to the person in the office of President, and to no one else, and yet, in another case in the same article, to assume that the words "the President" include not only the person holding the office of President but every other person living who at any previous time has held the office of President. This is the result to which the supporters of jurisdiction in this case are driven, upon the theory that the fourth section of the second article includes not only the persons in office but all other persons living who at any time have held either of the offices enumerated or described in that section. The substantive members of this section, "the President," "the Vice-President," and "all civil officers of the United States," are so connected with each other grammatically, logically, and by a similarity of responsibility that the law of impeachment must be the same for all. Inasmuch as section 4, article 2, whatever construction may be put upon it, relates to the President and Vice-President and all civil officers of the Government who for the most part are the appointees of the President, by and with the advice and consent of the Senate, or of the heads of the several Departments, it would seem that no more proper place could be found in the Constitution in which to set forth their liability to impeachment in cases of treason, bribery, or other high crimes and misdemeanors than in the article assigned to the duties, prerogatives, and liabilities of the President of the United States. Upon the view which I have been presenting, that the provisions of section 3, article 1, in regard to impeachment, are rules merely to be applied to those cases of impeachment for which provision is specifically made in the fourth section of the second article, there is no difficulty in reaching the conclusion that the phrase "Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States" is limited to these persons specified in section 4, article 2, who may be impeached and brought to trial at the bar of the Senate. It follows, also, and

necessarily, that the proceedings are limited to persons in office. Inasmuch as the judgment is mandatory that they shall be removed, although a discretion is vested in the Senate to disqualify the convicted party in the manner provided in the third section of the first article, it is clear that the impeaching power is limited to the persons specified and classified in the fourth section of the second article.

I submit in conclusion a statement of the case upon the argument that I have presented.

The power claimed by the friends of jurisdiction is an uncertain power, and no writer, either English or American, has ever fixed a limit to the authority of the British Parliament within that laid down by Wooddeson, who asserted that all British subjects are liable to impeachment. In this debate, however, it has been contended that private persons were never so liable in England. This argument is not sustained by the precedents, is not in harmony with the authorities, and it is wholly inconsistent with the claim of the Parliament repeated in many cases and distinctly set forth in the report of Mr. Burke of 1794. From that report it appears that the authority was unlimited and that precedents of former Parliaments even were not binding. But whatever may be the liability of private persons, it is quite clear that all naval and military officers were not only subject to impeachment in Great Britain, but that such persons were the favorite objects of the proceeding. Jurisdiction in this country brings these officers, whether in commission or out of commission, alike within the power of the House to impeach and the power of the Senate to convict and remove from office, thus annihilating one of the high constitutional prerogatives of the President. In time of war the exercise of the power would injure the rights or even endanger the existence of the Government.

It is not claimed by any one that there is a specific grant of this power in the Constitution of the United States, and it must be admitted that for nearly one hundred years no assertion of such power has been made except by managers or counsel in two of the early trials. This claim was neither recognized directly by the Senate nor involved in the judgments finally rendered. On the other hand, it is to be said that those who deny jurisdiction in the case at bar so construe the Constitution that civil officers are subject to a jurisdiction and judgment corresponding exactly to that to which members of the House of Representatives and Senate are amenable. Expulsion is the only penalty that can be imposed upon the latter, and that penalty may be avoided by resignation even at the last moment before the final one in the proceedings. Civil officers, by the process of impeachment, are also liable to removal by the judgment of the Senate, which also, it is to be admitted, may be avoided by resignation. In both cases the parties accused are alike liable to indictment, trial, judgment, and punishment in the criminal courts, according to the laws of the land.

While the penalties imposed upon members of Congress and upon civil officers are thus shown to be equal, it is to be said that the obligations resting upon Representatives and Senators are even higher in their character, and their opportunities for doing the public an injury by the commission of the crimes enumerated are even greater than the obligations imposed upon or opportunities open to civil officers. It is to be said further that the construction given to the Constitution by those who deny jurisdiction furnishes appropriate use for every word employed in the Constitution, while, by the construction claimed by the friends of jurisdiction, there is no certainty as to the subjects of impeachment or the judgment that may be rendered in case of conviction.

Opinion of Mr. Cooper,

Delivered May 26, 1876.

Mr. COOPER. Mr. President, the only question before us for decision arises under the plea of the defendant denying the jurisdiction of this court to try him upon the articles of impeachment presented by the House of Representatives charging him with high crimes and misdemeanors committed while in office as Secretary of War. The crimes charged, it is conceded, are such as may be the subject of impeachment. They are of the class expressly named in the Constitution as the subjects of this proceeding. Nor is it denied that if committed at all by the defendant it was while he held a civil office under the Government of the United States. But the defense rests alone upon the assumption that the defendant not now being in office cannot be tried in this mode of proceeding. The issue being thus narrowed relieves us from the necessity of examining and determining the various questions which have been suggested and discussed as to what character of offenses were the subject of impeachment at common law, or under the English government, and the persons who might there be tried for such offenses. It is certainly true, as has been argued, that we possess no power to try this case unless it is conferred upon us by the Constitution of the United States. This is a Government of delegated and enumerated powers, and possesses such only as are clearly granted by the organic law.

That law is our chart. Its mandate we must obey. Where it is silent we should not act.

The magnitude of the power sought to be exercised, together with the results for good or evil which must follow its use to the citizens of the Republic, affecting as it will the rights and privileges of all who have held office under the Government, demands for its exercise a clear and explicit grant of authority. Impeachment calls into use the highest powers of Government. It exceeds in importance, because of the grave nature of the offenses cognizable under it and the exalted position of the culprits arraigned at its bar, all other investigations of alleged criminal misconduct known to civilized communities. Hence the importance and necessity for the grant of explicit authority before it shall be used. But if such authority is found in the organic law then the duty to act is made the more imperative from the same weighty considerations. The public weal is for the time being committed to our care and guardianship, and we should be careful that we are not unfaithful stewards or unmindful of the great interests confided to us. The decision we may make in this case will not only affect the defendant in character and position, but will embrace within its scope every person who has held, or may hereafter hold, office under the United States Government. Proceedings by impeachment in this country are for the remedy, if not punishment, of offenses "which are of such a nature as to endanger the safety or injure the interests of the United States, and the object of the Federal Constitution was to provide for that safety and to protect those interests."

It cannot be denied that the power to impeach for such offenses is conferred upon the House of Representatives by the Constitution. The same instrument also vests in the Senate the right to try all such impeachments. Are these rights conferred in express terms under one article of the Constitution, or are they to be implied under another?

If those who find the power under the first article of the Constitution are correct, then it is broad and ample, unless qualified and limited by some other provision found in the same instrument. It is admitted that the Constitution must be construed as a whole; that its several provisions must be made to harmonize; and no construction given to it is correct which does not reach such result. Force and effect must be given to each provision contained in it. Nothing was inserted which is meaningless or foolish. It is methodically divided under appropriate titles significant of the subjects intended to be embraced under each. The right conferred upon the House of Representatives of the sole power of impeachment is given by the first article of the Constitution, which provides for the legislative power, in whom vested, and of what to consist. It is placed in the same sentence with the power of the House to choose their Speaker and other officers. The right of the House to choose a Speaker is given nowhere else in the Constitution.

Ever since the organization of the first House of Representatives under the Constitution, this power has been exercised without objection from any one. It has always been acted upon, and thus acknowledged to be substantive in character. This being so, why is not the power to impeach, included as it is in the same sentence, also a substantive grant of power? What difference is there between them? Why not act upon the one as is done on the other? The words used to confer the one are as comprehensive and significant as those which confer the other. The power of the Senate to try all impeachments is as broad and comprehensive as the power given to the House to institute them. I confess my inability to fully comprehend the distinction taken by several of my brother judges in this case, between a substantive and functional grant of power under the Constitution.

If I comprehend the distinction at all, it is that the former is a vital, active power by virtue of the grant, whether express or implied, the other is merely enumerative, to be afterward defined and vitalized, and if not so defined and energized remains dormant and useless. The one is a living body ready to carry out the object of its creation. The other possesses the form of a body, but is without life or active principle unless breathed upon through some subsequent provision. I do not think the distinction exists. Those who do insist that the provisions of the first article of the Constitution, giving to the House the sole power of impeachment and to the Senate the sole power to try all impeachments, are functional and draw their vitality from the fourth section of the second article of the Constitution. Others who concede the substantive grant of power in the first article yet insist that it is limited and defined by this fourth section of the second article. How different the effect given by the two to this last-mentioned section. The one makes it expansive and life-giving, the other restraining and limiting. The words used in this fourth section of article 2, are not the most apt which our language affords to confer jurisdiction, if such was the intent of those who used them. If they were the only words used in the Constitution upon the subject of impeachment, no express grant of power to impeach or try impeachments would be conferred by that instrument. Such power could only be implied. The implication, however, under such a state of facts, that they were intended to confer jurisdiction only, or to the crimes specified and against the persons named, would be greatly strengthened.

But the very necessity which would exist in the case supposed to give them a jurisdictional meaning, from the absence of a more explicit and definite grant, cannot and does not exist now, because the grant in such cases is elsewhere in the same instrument expressly and definitely made. Again, no reference is found in this fourth section of article 2 to the preceding articles of the Constitution in which

the same subject is mentioned, nor is it necessary in order to give full meaning and effect to this fourth section, article 2, to call to our aid any other provision of the Constitution. Full force and effect may be given to every word used in its construction, and a substantive and important object, separate and distinct from any before provided for, be deduced and made effective. The clause is mandatory, and commands the court vested with the important duty of trying the offenders therein named, on the charges specified, upon conviction to enter judgment as there directed. If the framers of the Constitution intended to make this a jurisdictional clause, how much more apposite would have been the word "may" where "shall" is now used?

But why should we leave an express grant of power to seek the same power in the uncertain process of speculation and construction? Why reject that which is given in unambiguous words and accept that which is to be found only by implication? I am satisfied this fourth section of article 2 is not jurisdictional at all. Then is it a limitation upon the jurisdiction conferred under the first article?

A proper construction of section 4 of article 2 makes it imperative upon the court to pronounce judgment upon conviction as therein provided whenever the power to impeach before granted shall be invoked against the class of persons therein specifically named. Not that the power to impeach the persons named is thereby given, and consequently denied as to all others, but the power having been already provided as to such persons, as well as others, when called into exercise against the persons named, shall be proceeded with in the manner and to the extent described. A different construction would render the provisions of article 1 on the same subject superfluous and unmeaning. The same power in cases of impeachment would exist without as with it. The former construction gives to each provision a use in furtherance of the general object, an appropriate and useful place in the mighty machinery of government then being constructed. I therefore conclude that the power of the House of Representatives to impeach and of the Senate to try all impeachments is given in the first article of the Constitution, and is ample and broad enough to embrace the case before us, and the power so given is not limited so as to divest such jurisdiction so vested in the present case by any subsequent provision of that instrument.

The framers of the Constitution incorporated in it a power which existed in most if not all of the States from which they came, and whose delegates they were, limited in many respects from what it was in the nation from which those States had so recently separated. It was no new and untried power, but one known and recognized and provided for by the organic law of the several States.

The Federal Constitution, like the constitutions of most of the States, prescribed the extent of the judgment to be rendered and the number of concurring votes in the court necessary to convict, but left the persons subject to this mode of procedure and the offenses for which it may be invoked as they existed at the time of the formation of the Government. The exercise of the power in England as well as in the original thirteen States which formed the national Union extended to and embraced all persons holding office under their respective governments who should commit crimes detrimental to the public weal or corrupting to the purity of governmental administration, whether in or out of office at the date of prosecution. The moment an officer committed an impeachable offense he became liable to prosecution by impeachment, and no lapse of time removed this liability. The jurisdiction to try attaches upon the commission of the offense, and so remains, unless divested by some equally positive law. My conclusion is that this court is vested with jurisdiction to try the defendant upon the articles of impeachment exhibited by the House of Representatives, therefore the plea of the defendant should be overruled.

Opinion of Mr. Saulsbury,

Delivered May 26, 1876.

Mr. SAULSBURY. The House of Representatives has exhibited articles of impeachment against William W. Belknap, late Secretary of War, charging him with high crimes and misdemeanors while in office, and demands that he be compelled to answer the charges thus preferred against him before the Senate sitting as a court of impeachment. The defendant denies by proper pleas the jurisdiction of the Senate to try him upon those charges, alleging that he is and was at the time the said articles were exhibited a private citizen, and not liable to impeachment for anything alleged to have been done by him while in office. The question, therefore, upon which we are now to pass is not whether the charges preferred are true, but whether the Senate can rightfully enter into any inquiry in reference to them.

The question presented involves to some extent an inquiry not only into the power of the Senate, but also of the House of Representatives, in connection with impeachments. Whatever authority upon this subject, as upon all others possessed by either House of Congress, is derived from the Constitution, and it is therefore important to ascertain the meaning of the provisions of that instrument which relate to impeachments, the inquiry is attended with some embarrassment; nevertheless, I have been able to arrive at a conclusion at least satisfactory to my own mind. In briefly submitting the reasons for the opinion I entertain, I may be allowed to say that I have no expectation of being able, and no desire, to influence the judgment of others. My only object in the enunciation of my own views is to justify the vote which I shall give upon the question now before the Senate.

By section 2, article 1, of the Constitution "the sole power of impeachment" is conferred upon the House of Representatives, and by the next section of the same article the "sole power to try all impeachments" is granted to the Senate. These provisions, in my opinion, contain the only warrant of authority to either House to proceed by impeachment against any person whomsoever. All other provisions of the Constitution relating to the subject are such as regulate the proceedings, determine and limit the judgment to be pronounced in case of conviction, enumerate the persons impeachable, and deprive the President of the power of pardoning in cases of impeachment. In order to determine, therefore, the question now before us, namely, whether the Senate sitting as a court of impeachment has jurisdiction to try the defendant on the charges preferred against him notwithstanding his resignation, it is necessary to ascertain what was intended by the framers of the Constitution to be granted to the House of Representatives by conferring upon it "the sole power of impeachment" and what authority and jurisdiction was conferred upon the Senate by granting to that body "the sole power to try all impeachments." Upon the right interpretation of these clauses and the ascertainment of their true meaning and import depend, in my opinion, the whole question which we are now to decide. It will be observed that impeachment is nowhere defined in the Constitution, nor the extent of its application either to persons or to crimes definitely settled and determined. We must therefore look to other sources for the measure of the authority conferred upon the two Houses of Congress by the provisions of the Constitution already referred to.

Prior to the adoption of the Federal Constitution impeachment was a recognized mode of procedure in this country against public offenders, and had been incorporated into the constitutions of all the States which were represented in the convention that formed the Federal Union, or at least in all the States that at that time had adopted constitutions. In none of the State constitutions had it been defined, though prescribed as the appropriate remedy for the prevention of official crimes. In the first fundamental law of my own State, adopted on the 20th day of September, A. D. 1776, a provision was inserted for the impeachment of persons holding official relations to the State guilty of high crimes while in office, and in most, if not all, the other States were constitutions formed about the same time with similar provisions. In none of these early State constitutions is the power of impeachment or the extent of jurisdiction thereunder defined. Nor had there been any practical application of the power of impeachment in any of the States then forming the Union. We must therefore look to other sources to ascertain the nature and extent of the powers and jurisdiction which may be exercised under the provisions of the Federal Constitution to which reference has been made as the source of congressional authority.

To ascertain their meaning I apprehend recourse must be had to the history of impeachments in England, from which we have borrowed not only the remedy itself but the mode of proceeding therein. I shall not attempt a recital of the cases of impeachment that have occurred in that country, but content myself by saying that with few exceptions, if indeed there are any exception, it was a proceeding intended to reach and punish high official crimes, and was applied to persons indiscriminately in and out of office or public station who had been guilty of offenses at any time while charged with public trust or while holding some official relation to the government. Hallam, in his Constitutional History of England, says that—

> The earliest instance of parliamentary impeachment or of a solemn accusation of any individual by the Commons at the bar of the Lords was that of Lord Latimer in the year 1376.

Impeachments occurred at various periods in Parliament subsequent to that time, but in very few, if any, instances has it been applied to any but persons who were or who had been in some way charged with official duty. Indeed at one time the House of Lords refused to try an impeached commoner, on the ground that they were not compelled to give judgment against any but peers of the realm. This refusal on the part of the House of Lords shows conclusively that at that time no person other than those high in rank and station could be proceeded against by impeachment for any offense.

The Lords subsequently modified their views on this point and entertained complaints against persons inferior in station to themselves, but I am not aware of any instance in which the attempt was made to impeach a private individual. If such instances occurred at any time it must have been before the powers of Parliament were well understood. We all know that in the early days of English history the rights and powers of Parliament were not clearly defined; and it may be that excessive authority was at times claimed and exercised by both Houses of Parliament, and private persons subjected to their control. The constitution of England and the powers of Parliament did not reach their present well-defined limits in a day, but became settled and marked by centuries of time. To whatever extent, therefore, the remedy or process of impeachment may at any time have been carried, whatever may have been the character of the crimes or the persons to which it was applied, certain it is that at the time our Constitution was adopted it was understood, both in England and in this country, to extend only to such persons as were or had been in civil office, and who were or had been guilty of some high offici.

crime or breach of public duty. No instance can be found of its application otherwise for a long time prior to the date of our Constitution.

Nor was any such unlimited power claimed by the British Parliament. It was asserted by the learned counsel for the defendant in this case, and has been repeated in argument by Senators, that private persons who had never held any public trust were liable to impeachment in England, and that, if the jurisdiction of Parliament over persons was held applicable to impeachments in this country, every American citizen is liable to impeachment. No greater mistake could be made. Trial by jury is the birthright of Englishmen, and is as well secured by Magna Charta as it is by our own Constitution. There may have been a few instances when this right has been denied, but no instance of its denial can be found in that country more flagrant or inexcusable than recently occurred in this country, when a woman, believed by many to be innocent of the crime with which she was charged, was tried by a military commission and condemned and executed. The mistake arises from a very erroneous idea of the power of the British Parliament. There are limitations on the power of Parliament which are as well defined as are the powers of Congress, and equally as well observed. In the exercise of legislative functions Parliament may be omnipotent, but in the exercise of judicial authority no such omnipotence is claimed. Its jurisdiction as the highest court of the realm is as clearly settled as the juridisction of the court of King's Bench. It takes no cognizance of the crimes of private persons, but leaves them to be tried by the course of the common law, dealing in the exercise of its criminal jurisdiction only with public offenders. This view of the jurisdiction of Parliament in impeachments is fully sustained, in my opinion, by the remarks of Blackstone in the fourth book of his Commentaries, page 259.

Nor does impeachment by the practice of Parliament now extend, nor has it for a long time extended, to offenses committed by military and naval officers holding no other relation to the Government. It may be that peers of the realm and others connected by rank and station with the management of public affairs, holding high commissions in the army or navy, are subject to the jurisdiction of Parliament, and liable to be tried by impeachment; but such liability arises from their relations to the public, independent of their connection with the military or naval service of the country. Military men holding no other relation to the government are subject to military law, and are tried by courts-martial in Great Britain, as in this country, for offenses cognizable and punishable by such laws, and this was the case long prior to the formation of the Federal Constitution. A noticeable instance might be cited in the case of Admiral Byng, who was tried by court-martial in 1757, just thirty years before the Constitution was formed, and unjustly condemned and executed. He had been placed in command of a squadron of ten ships-of-the-line, and ordered to the Mediterranean to re-enforce and strengthen the forces in Minorca. He was advised of the inefficiency of his outfit and of the superior strength of the French fleet, which had already landed a heavy force and reduced nearly the whole island; but, nevertheless, he endeavored to obey his instructions, and encountered the French vessels superior in number, and, after a vigorous engagement, ending without decisive result, both squadrons withdrew. Complaints were made by the people of Great Britain against both the admiral and the ministry for the failure of the undertaking, and the ministry, to protect itself from censure, caused the admiral to be tried as stated, and, in obedience to its wishes, he was condemned, and suffered death. This instance of the trial of a distinguished naval officer by court-martial, so recent and so unjust, was known to the members of the convention that framed our Constitution. They knew that impeachment did not extend to such officers, but was applied solely by the practice in Parliament to offenses committed by persons holding civil offices under the government. They were as familiar with the application of impeachment as we are. They knew as well the extent of its application to persons and to crimes as we know to-day, and they intended by the provisions of sections 2 and 3 of article 1 of the Constitution to confer precisely the same power and jurisdiction upon Congress that was exercised in England by Parliament, save only as it was limited by express provisions in the Constitution itself.

The investiture of Congress with this power of impeachment is made in apt and fitting terms. The words employed are "the sole power of impeachment" and "the sole power to try all impeachments." It is difficult to imagine how clearer, stronger, or broader expressions could have been used to convey authority or jurisdiction, or how they could have been so employed without an intention to confer upon Congress not only the exclusive, but the most ample, power of impeachment; upon the House of Representatives the full and unrestricted authority to impeach by formal accusation, and upon the Senate full and complete jurisdiction to try and determine the truth of the accusation. The word "power" is perhaps the most comprehensive and appropriate word that could be employed to confer authority, and was used by the convention in the same sense and with the same effect in the sections under consideration that it was intended should be given to it in any other part of the Constitution where it was employed to express a delegation of authority to Congress. It is true that other clauses of the Constitution which I shall hereafter notice in certain respects limit and regulate the power thus clearly and broadly given; but without such restrictions and regulations the authority of Congress would be as absolute and unlimited in impeachments as it is in the Parliament of Great Britain.

I now proceed to notice the limitations found in the Constitution upon the power of impeachment granted to Congress in the first article. It will be observed that whatever restrictions exist upon the power apply exclusively to the Senate sitting for the trial of an impeachment and do not touch the power conferred upon the House of Representatives to impeach. It will also be further observed that they principally affect the judgment to be rendered upon conviction, and in no sense restrict the jurisdiction of the Senate to try the party accused. The provisions of the Constitution requiring the Chief Justice to preside when the President of the United States shall be on trial and that the Senate when sitting for the trial of an impeachment shall be on oath or affirmation can in no sense be regarded as restrictions or limitations upon the power of the Senate or as in any way affecting its jurisdiction to try an accusation; they simply regulate the proceedings upon the trial, nothing more.

Two limitations upon the power granted to the Senate are found in section 3 of article 1 of the Constitution, and in my opinion these are the only limitations upon the power found in that instrument.

The first of these, if indeed it can be properly considered a limitation of the power at all, is a restriction on the power to convict. It is in these words:

> And no person shall be convicted without the concurrence of two-thirds of the members present.

This provision was doubtless inserted for the greater protection of persons accused, and was intended to exclude the possibility of a conviction without the clearest proof of guilt. Without this provision a bare majority of the members present would have been sufficient to convict, and it may therefore be regarded as in some sense restrictive of the power of the Senate, but as in no manner affecting its jurisdiction to try a person accused in due form by the House of Representatives.

The only remaining restriction upon the power conferred upon the Senate is that which refers to the judgment to be rendered:

> Judgment in cases of impeachment shall not extend further than removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

This is clearly a limitation upon the judgment to be rendered, and was inserted for that purpose. The House of Lords in England were not thus restricted in the judgment which it could render in cases of impeachment, but it pronounced the judgment prescribed by the law of the land as the punishment for the offense of which the party was found guilty; and the judgment thus rendered was a complete bar to further prosecution in the criminal courts. The idea seems to prevail with some persons, and has been more than intimated in the discussion of this question, that the House of Lords could impose whatever punishment it might see proper upon the person convicted on impeachment. This is a very erroneous idea. It could inflict no other punishment than such as had been previously prescribed by law or which the common-law courts could and would have been bound to inflict for similar offenses. The judgment, however, of the House of Lords might go the extent of the law; and I apprehend that but for the provision of the Constitution under consideration, and the limitation it prescribes, the judgment of the Senate upon conviction on impeachment could have gone to the same extent and could have been pleaded with effect in any further prosecution in the courts for the same offense.

The framers of our Constitution saw proper to limit the judgment of the Senate so that it could not go beyond removal and disqualification, and then remit the person convicted to the criminal courts to be dealt with according to law. It will be observed that in the clause under consideration removal and disqualification are not made mandatory upon the Senate, but are left within its discretion. The judgment shall not extend further than removal and disqualification, but need not go so far. It might have been a judgment of censure, or of suspension, or of removal without disqualification. The clause was intended to limit the judgment, not to prescribe what it should be.

Neither of the limitations to which I have referred affect in any way the jurisdiction of the Senate to try a party impeached, and do not therefore touch the question now before the Senate. These are all the restrictions contained in the Constitution upon the power of the Senate in the trial of impeachments, unless there is some limitation or restriction found in section 4 of article 2, which it is claimed by some contains both an affirmative grant of power and a limitation upon its exercise.

We have already seen that the power of impeachment in its amplitude is conferred by the second and third sections of article 1 of the Constitution. Does the fourth section of article 2 in any way enlarge that power or confer jurisdiction upon the Senate not already possessed? That it contains no express grant of power is admitted; and it is difficult to see how an express grant conferred in the clearest and most ample manner can be enlarged by implication. The language of the section is:

> The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes or misdemeanors.

What authority is given by this language either to the House of Representatives or to the Senate to proceed by impeachment against any one? Certainly it will not be contended that standing alone, unconnected with other provisions of the Constitution, it authorizes the Senate to take cognizance of official misconduct or summon to its

bar the most guilty official offender. If the section confers jurisdiction, may I not inquire upon what department of the Government is it conferred? It is not conferred in terms upon the Senate; and from the language employed, if this was the only provision relating to impeachment, jurisdiction might be exercised with as much propriety by any other department of the Government as by this body.

Congress nor neither branch of Congress can rightfully claim or exercise any power which is not expressly granted to it, or which is not essential and necessary to carry out an expressly-granted power. It would therefore be a dangerous doctrine to maintain that Congress, in the absence of any express grant of power upon any given subject, could assume to exercise such power from an implication only. So that, if this fourth section of article 2 were the only provision in the Constitution referring to impeachment, I should deny that Congress had any authority upon the subject at all. The defendant might in such case interpose very properly a plea to the jurisdiction of the Senate, and defy its power either to try or give judgment against him.

This section confers no jurisdiction over persons not impeachable under other provisions of the Constitution. We have already seen that by the practice of Parliament civil officers and persons holding positions of public trust were impeachable and that the same authority of impeachments was conferred by the first article of the Constitution upon Congress that was possessed by Parliament, except as it was expressly limited in the instrument itself. Neither the enumeration of the persons impeachable nor the offenses for which they could be impeached in the section can be construed as conferring or enlarging the jurisdiction of the Senate, for without such enumeration the persons therein named would have been impeachable for any of the crimes mentioned in the section. If the provisions of the fourth section of the second article had been intended to confer or enlarge the jurisdiction of the Senate, they would have been inserted among the grants of power to Congress, and not in another part of the instrument relating exclusively to the executive branch of the Government. The men who made the Constitution were not novices, but understood fully the importance of discriminating clearly between the powers of the different departments of the Government. Hence when power was given to Congress it was so declared in express terms and so in regard to the executive and judicial branches of the Government, to make the line of demarkation if possible still more clear the powers conferred upon each department were placed in separate articles of the Constitution.

The Constitution must be construed by the same rules of construction that are applied to other instruments and its meaning ascertained by giving to each provision the effect it was designed to have. The object proposed by this section (section 4, article 2) is no less obvious from the language employed than from the debates in the convention. The purpose intended was to insure the removal and disqualification of the President, Vice-President, and other civil officers if convicted on impeachment while in office. By the provisions of section 3 of article 1, as I have already stated, it was left to the discretion of the Senate to remove and disqualify the guilty incumbent or not, and this fourth section was inserted to take away that discretion and render the removal and disqualification certain. It was not intended to confer jurisdiction or in any way enlarge the jurisdiction already conferred upon the Senate. It was inserted for no such purpose and can have no such effect.

It has been insisted and urged as an argument in favor of the jurisdictional character of this section that without its provisions the President of the United States could not have been impeached for any official misconduct. This is a great mistake, arising doubtless from the fact that in England the king was not impeachable by Parliament. The kingly office is a very different office from that of the President of the United States. The latter holds his office only for a limited time and derives his authority from the people, to whom he is always responsible; whereas the king reigns independently of his subjects and by right of inheritance, responsible neither to the people nor to Parliament.

By turning to section 3, article 1, it will be seen that the Constitution had already, if not expressly at least by implication, provided for the impeachment of the President specially by requiring the Chief Justice to preside when he was on trial. Without, however, any special provision he would have been liable to be impeached for official crimes under the general power of impeachment conferred upon the House of Representatives, and could have been tried by the Senate as any other civil officer.

Nor in my opinion does this fourth section operate as a limitation upon the jurisdiction of the Senate in any respect. It has been insisted in argument that the words "civil officers" used in this section apply only to persons actually in office, and that therefore the jurisdiction of the Senate in the trial of impeachment is limited to officials incumbent at the time of the trial. If the premises were admitted, the conclusion does not necessarily follow. If it were admitted that the term "civil officers" as used in this section applies exclusively to the incumbents of office, and their removal and disqualification made mandatory upon conviction, it does not follow that persons who have held civil offices under the Government and been guilty of the offenses named in the section are exempt from liability to impeachment and to disqualification if convicted.

But I am not prepared to admit that these words are used in a sense so restricted and narrow as is claimed. In their broader signification they embrace all persons who have held office and been guilty of the commission of official crime therein. It is in this broader sense that the same words are used in several statutes which provide for the punishment of official misconduct. No question has been made in the courts that the appellation of civil officers used in these statutes does not apply as well to persons who have been removed from office after their offenses have been discovered as to incumbents. Indeed, to confine these words, when used in the statutes, to persons actually in office would render it difficult, if not impossible, to convict for the most flagrant official crime; for immediate removal follows the detection of guilt in a public officer. A more reasonable construction, therefore, is to consider the term "civil officer," as used in section 4, as applicable alike to persons actually in office and to such persons as have held official relation to the Government, and while in office have been guilty of the offenses specified in the section. By such an interpretation the guilty incumbent upon impeachment may be removed and disqualified, and no guilty official by resigning allowed to escape.

Looking then alone to the language of the Constitution relating to impeachment and giving to each clause that construction which harmonizes with the various provisions on the subject and best effectuates the object proposed by their insertion in the instrument, I am led to the conclusion that the Senate possesses the jurisdiction to try the defendant on the charges contained in the articles of impeachment exhibited against him, notwithstanding his resignation and retirement from office before his formal impeachment by the House of Representatives.

It seems to me that this conclusion is sustained not only by a fair and reasonable construction of the language of the constitutional provisions on the subject, but is fully warranted by what must be supposed to have been the intention of the framers of the Constitution by incorporating those provisions in that instrument. The nature and object of impeachment and the extent of its application to persons and to crimes, as already stated, were fully understood at the time our Constitution was framed, and if the convention had not intended that it should reach offenders who had ceased to hold office after having been guilty of crimes therein, the men who sat in the convention would have so declared in plain and unequivocal terms. At the very time when they were framing the Constitution and deliberating on this very subject proceedings had been commenced in England for the impeachment of Warren Hastings, notwithstanding he had been out of office for more than a year before the proceedings were commenced. His case had attracted universal attention, not only in England but in this country, and the members of the convention were not ignorant or indifferent spectators of an event so marked in the history of the country with which they had so long been connected and from which they had so lately separated. They knew full well that Hastings was to be tried for crimes while in office, though at the time he had returned from India and surrendered the power he had used with such oppression. Yet with this knowledge, not inadvertently, but upon deliberation, they incorporated into our Constitution impeachment, with all its incidents, save only as it has been curtailed by express limitation, as a protection and remedy against official crime and misdemeanors. If they intended that impeachment should lie only against offenders while in office, is it not strange that they omitted so to declare in plain and unmistakable language.

Is it not more reasonable to suppose that the framers of the Constitution intended to protect the people of this country as fully as the people of Great Britain were protected against official corruption and crime by holding their public servants accountable even after their retirement from place? To suppose that they intended otherwise is to impute to them a degree of folly I am unwilling to charge. They intended, in my opinion, impeachment as a visitation, at the discretion of Congress, upon official misconduct, and did not intend that the guilty should escape by resigning his position. If this is not true, impeachment is a nullity; for it would always be in the power of the guilty to evade it. No man who was conscious of his guilt would attempt to retain his office and incur the risk, nay the certainty, of removal and disqualification to hold any office of honor, trust, or profit, when by resigning his position he could escape the consequences of his crime.

In the consideration I have given to this question I have not been unmindful of the fact that an unwise exercise of the power conferred upon Congress may sometimes occur. This consideration, however, ought to have more weight in conferring a power than in interpreting one already given. It may sometimes happen, that from party zeal or some temporary excitement, the House of Representatives may be induced to proceed by impeachment against a person long after he has ceased to hold any official relation to the Government for offenses committed while in office. But such a contingency is remote, and not likely to happen. Such a power is admitted to exist in the British Parliament, and yet no case of impeachment has occurred in that kingdom for more than seventy years. In some of the States of this Union where the power now claimed for Congress is undoubted, no case of impeachment has ever taken place, and it is at least fair to presume that no hasty or ill-advised action will be taken by the other branch of Congress, but that the power of impeachment will be exercised with deliberation, and only when demanded by the public good, especially when the party impeached is out of office at the time.

If it were fair to presume that party spirit at any time could so far

influence the action of the House of Representatives as to induce it to proceed unadvisably by impeachment against any person whether, at the time, in or out of office, there would be more reason to apprehend that such proceedings would be instituted against an obnoxious incumbent whose removal might be desired, than against a political opponent who had by resignation or the expiration of his term of office retired to the shades of private life. I confess, however, that I share but little in the apprehensions expressed by others. We have passed through a century of our national existence in which party spirit has been fully as unrelenting as it is likely to be in the future, and with the single exception of the impeachment of President Johnson I am not aware that any large number of the American people ever charged or suspected that either House of Congress, or any member thereof, was actuated by any other purpose than a desire to subserve the public welfare.

Speculations, however, about the possible consequences that might result from an unwise exercise of a power can render little aid in determining its existence. If, however, speculation was admissible, if apprehended or possible consequences should have any weight in determining the judgment we are to give upon the question of jurisdiction presented to the Senate, or the opinions we express thereon, then I submit it would be proper to consider the results that might follow a declaration by this body that it has no jurisdiction to try a high public officer who has resigned and retired from place, although his whole official life may have been stained and polluted by corruption and crime.

If we have not the jurisdiction to try the late Secretary of War upon the charges contained in the articles of impeachment simply because he retired from the Cabinet on the morning of the day he was accused, with the avowed purpose of escaping impeachment and evading the jurisdiction of the Senate, then there is in this Government no assured and certain means for the adequate protection of the people by the disqualification of the guilty offender, high or low. The most guilty may escape and will be likely, nay, certain, to escape the disqualification threatened against official crime. He may have stained his hands with bribes and brought reproach upon the country that has honored and trusted him, and when his guilt has been detected and impeachment is impending, with a view to evade the disqualification provided by the Constitution for his offense and leave the road open for his return hereafter to public life, he may throw up his commission and plead the immunity that belongs to a private citizen.

A Secretary of State may have bartered the honor of his Government for gold and defy its power to disqualify him from holding its highest positions of honor, trust, and profit thereafter. Or a Secretary of the Treasury may rob the country of its revenues and appropriate them to his own use, or, like the unjust steward, for selfish purposes may divide them among his friends, and, after his guilt had been discovered and before articles of impeachment could be prepared, he could retire from the Cabinet, avoid your jurisdiction, and escape the judgment of disqualification you are authorized to pronounce. If it shall be suggested that he would still be amenable to the jurisdiction of the criminal courts and could be punished by indictment and conviction under the laws of the land, it is a sufficient answer that such liability is only a part of the protection against official crime provided by the Constitution of the country. I might meet such suggestion with the further reply that escape from criminal prosecution and conviction is neither impossible nor improbable where the offender has the advantages of wealth and the friendship of those in high social and official positions. Besides, in case of conviction in the courts, the President, if so disposed, could exercise the pardoning power and relieve the culprit from the penalties of the law. Whereas, in case of impeachment, the Executive could not, if so disposed, interfere with the judgment upon conviction by the interposition of executive clemency.

In the conclusions at which I have arrived upon this question I have not considered as important or material the time at which the resignation of the defendant took place. However proper on the part of the managers of the House to present for consideration the technicalities of the law in reference to the doctrine of relation and the fraction of a day, I could not consent to decide a grave question like the one before the Senate, involving consequences so serious to the defendant, on any such grounds. If the jurisdiction of the Senate cannot be maintained by a fair interpretation of the provisions of the Constitution referring to impeachment, it ought not to be claimed or exercised. On the other hand, if a careful examination of the constitutional provisions on the subject, aided by the lights which contemporaneous and subsequent events afford, leaves no doubt upon the question, then the duty is plain and the jurisdiction must be asserted.

I have not deemed it necessary to review the authorities referred to in argument by the managers on the part of the House and by the counsel for the defendant. They render in my opinion but very little aid in arriving at a correct conclusion upon the question now before the Senate, for the reason that the precise question has never heretofore arisen in any court of impeachment in this country.

Whatever light the authorities referred to throw upon the subject has been so repeatedly presented in discussion by others that further review is useless. I may say, however, that in none of the cases of impeachments cited, whether occurring in this body or in the States of the Union, nor in the opinions of commentators or other eminent men who have written upon the subject do I find anything, when properly understood, at variance with the conclusions at which I have arrived.

Neither Story nor Rawle in their Commentaries upon the Constitution, though evidently differing in the views which they individually entertained upon the question now for the first time before the Senate, has attempted to maintain the opinions which they hesitatingly express either by authorities or precedents. The former concludes his reference to the subject by declaring that it is an open question to be settled only authoritatively when it shall arise; and the latter, while clearly indicating his own opinion, makes no attempt to sustain it by reference to the opinions of others, but dismisses the subject by remarks embraced in a single paragraph.

The case of Blount, so often referred to, has no relevancy to the present case, and the opinions expressed by the learned counsel who appeared for Blount or the managers on the part of the House of Representatives were submitted upon a question totally distinct from that now before the Senate, and consequently throw but little light upon it.

The case of Bernard recently tried in the State of New York upon charges involving in part his official conduct during a previous term in the same office which he held at the time of his impeachment raised more nearly the question presented by the pleadings in this case than any that has been cited. Yet the question as presented in that case was involved in others not in this, and, although the jurisdiction was maintained by a majority of the court, the complication of questions involved not less than the divided opinion of the court renders the decision in that case unreliable as authority in the determination of the question before us. This case stands alone and cannot be determined by precedents, for none can be found. Fortunately for the character of our Government this is the first instance in our history where a high Cabinet officer, charged with the responsibility of administering the affairs of one of the most important Departments of the Government and intrusted with the dispensation of immense patronage has been formally charged at the bar of the Senate with bribery and corruption in office.

I am glad that no precedent exists to guide our action and control our deliberations in the case before us, but that it must be settled from an honest conviction of the constitutional powers and duty of the Senate and with a just regard to the rights of the defendant and the welfare and protection of the people of the land.

Entertaining the opinion that the Senate has jurisdiction to try the defendant on the articles of impeachment exhibited against him, notwithstanding his resignation prior to his impeachment, I must vote accordingly. In my opinion the demurrer should be overruled.

Opinion of Mr. Jones, of Florida,

Delivered May 26, 1876.

Mr. JONES, of Florida. The importance of the case in which we are now called to render judgment is all the apology that need be offered for a statement of the reasons which I am about to give for my vote. Since we have been engaged in the investigation of the intricate and novel question presented by the record before us, we have all felt the want of explicit authority to guide us to a safe conclusion. The decision of the Senate in the case of Blount, so often referred to in the arguments of counsel, has come down to us unaccompanied by any reasons whatever, and we are left to conjecture to ascertain the opinions of the Senators who sat in that case upon the great issues of law which were before them. It is true that a majority of them decided that the Senate had no jurisdiction over the defendant in that case because he was not a civil officer of the United States. Had the Senate in 1798, composed as it was of men who were familiar with the history of the Constitution, and who witnessed its formation and adoption, given us a clear statement of the law which then governed it in the trial referred to, it might have dissipated the doubts and difficulties which now surround us.

Let us not imitate the example they have set us in withholding the reasons of their judgment, but let us leave to those who shall succeed us the full benefit of every argument which has contributed to the conclusion at which we have arrived. The plea of the respondent, the replication of the House of Representatives, and the demurrer thereto, in my opinion present to the Senate an issue of law which it is our duty to meet and decide without reference to the matters of fact which are stated in the subsequent pleadings.

The plea alleges in substance that at the time the House of Representatives ordered the impeachment of the respondent, and at the time the articles of impeachment were exhibited against him at the bar of the Senate, he was not then, nor hath he since been, nor is he now, an officer of the United States.

The replication alleges the insufficiency of the plea, and then states that at the time the several acts charged against the respondent were done and committed, and thence continuously until the 2d day of March, 1876, the respondent was Secretary of War of the United States.

To this replication a general demurrer was filed.

It is very clear that this replication does not meet the issue tendered by the plea in the usual way. The House of Representatives

had three courses open to it: First, demur; second, traverse or deny the allegations of the plea; or third, confess and avoid them. It has done neither of these things. The replication confesses the truth of the facts stated in the plea, but it sets up no new matter in avoidance of them. It re-affirms the facts stated in the articles, for it must be borne in mind that the articles state that the several acts charged against the respondent were all committed while he held the office of Secretary of War, and this allegation is admitted to be true by the respondent's plea. The additional statement that he continued to hold the office until the 2d of March, 1876, adds no legal force to the replication, for it nowhere alleges that he was impeached on that day or previous to it. The joiner in demurrer by the House precludes the managers from connecting in any way the issue of law thus created with the issues of fact tendered and accepted in the subsequent pleadings. If we are going to pay any regard to the established rules of pleading, we cannot upon this demurrer give any judgment except upon facts the truth of which is not disputed.

Let us see, then, what facts are admitted by the pleadings. It is an elementary rule of pleading that all allegations not traversed or confessed and avoided must be taken as admitted. The respondent, therefore, has admitted that the acts charged against him were committed while he was Secretary of War. But he says we have no jurisdiction to try him, because at the time of his impeachment he was not, and is not now, Secretary of War. The replication by not denying the facts set up in the plea admits that the respondent was not at the time of his impeachment Secretary of War and does not now hold said office. So that we have clearly before us the following facts, the truth of which is conceded:

First. That the offenses and acts charged in the articles of impeachment were done and committed by the respondent while he was Secretary of War.

Second. That since that time and before his impeachment the respondent relinquished that office.

Third. That the respondent since the 2d day of March, 1876, has not been an officer of the United States.

These facts present to our minds a most perplexing legal question; that is, whether or not the respondent is subject to trial and punishment under the provisions of the Constitution relating to impeachment.

This is a question which rises far above all party considerations. We have been told from the bar that it is better that ninety-nine guilty men should escape than that one innocent man should suffer. But it might have been said with more aptness that it is better that five hundred guilty men should escape than that the Constitution should be violated. We all know how hard it is to divest the human mind and heart of those impressions and feelings which in times of party excitement insensibly creep upon us.

History does not furnish a single example of oppression or of tyranny, of violated right or party persecution, which the sanctity of law and the plea of good intention were not put forth to support. Man in all ages, both civilized and barbarous, has never been willing to admit that his excesses of power and authority were anything more than impartial and honest judgments demanded by the public good. Even Socrates when commanded to drink the fatal hemlock was not considered a victim but a subject of just and merited punishment. The most successful efforts that have ever been made to break down the liberties and destroy the rights of the people were those insidious and plausible judgments and opinions of courts and lawyers which in cases of doubt and uncertainty have usurped the functions of the law-maker, and in place of interpreting existing laws have established new rules and principles.

I am not of those who imagine that the greatest security for our liberties is to be found in the wisdom and impartiality of courts of justice. Still I entertain the very highest respect for the courts and judges of the land. I am willing to go as far as any one in my submission to judicial construction in all cases of a civil nature in which property only is involved. But I shall never yield my consent to the conviction of any man for crime where the law of the case is so very doubtful as to render it necessary to find authority for the conviction in elaborate and subtle arguments and refined distinctions drawn by logicians of great skill.

Enough has been said during the discussion of this case to satisfy me that if a person may be impeached for what are called official crimes after he has given up official station, it must be done in pursuance of a power arising from construction and not from the direct language of the Constitution.

The proposition is broadly asserted by the managers that when an impeachable offense is committed in office the person who commits it remains liable to impeachment, whether in office or out of office, during the whole period of his life; that when the crime is committed the jurisdiction attaches and cannot afterward be divested by any act of the offending party. If this is the meaning of the Constitution, it is full time the people were apprised of it, for in my opinion a more dangerous or unwarranted power was never claimed to belong to the General Government.

We have been told that the sole power of impeachment is vested in the House of Representatives, and the sole power to try impeachments conferred upon the Senate. This is true. It is further insisted that our jurisdiction over impeachable offenses is to be looked for in these clauses, and that we should go to the wide domain of the common law to ascertain the meaning and limitations of our powers; that the same rule of construction must be adopted with respect to impeachment which prevails in all cases when a common-law power or crime is presented for consideration; that there are no limitations in the Constitution upon our power of impeachment but what are to be found in that system of laws from which this term has been imported, except as to the punishment which we may impose after conviction; that as the common law at the time of the adoption of our Constitution extended the power of impeachment to all official offenders, whether in or out of office, the same authority now exists in this and the other House of Congress. The doctrine contended for by the learned managers is in my opinion utterly inconsistent with the theory of our government. Our Constitution is an instrument of enumerated powers. These powers may be classified under two heads, first, express powers; and second, implied powers.

In some instances a general authority is given in express words to do particular things, but the means best adapted to the ends in view are left to the judgment of Congress. It is a fundamental principle of our system that all implied powers conferred by the Constitution must be exercised by Congress, and, before assuming the forms of laws, subjected to the checks of each of the departments which constitute the law-making authority. There is no single department or officer of the Government that is invested with authority to exercise any implied powers.

There is no officer or tribunal under our Constitution whose duties and jurisdiction are not fixed by express law. The executive power which is vested in the President is not the loose and indefinite authority which appertained to the Crown of Great Britain when our Constitution was adopted. The powers of the Executive are limited and restricted by the Constitution and the laws, and he is not permitted in any case to resort to construction to ascertain how far he may go in discharging his official duties. The same may be said of the judicial department. Judicial and executive powers were as well know and defined in England as the power of impeachment. Still, we find these powers limited and restricted in accordance with our republican system, and nothing left to implication.

The monarch had power to regulate weights and measures, grant franchises, appoint all officers, and authorize the coining of money. But did any one ever pretend that these prerogatives attached to the office of President because we borrowed our ideas of executive duties from the English system? The grant in our Constitution which vests all executive power in the President is fully as broad as that which vests the sole power of impeachment in the other House and the sole power to try impeachments in the Senate; still there is not a Senator on this floor who will say that a single attribute of the king which existed in 1787 was vested in the President by the grant of all executive power to that officer. The same is true of our courts of law and both Houses of Congress. While in some cases we are referred to the common law for definitions of legal phrases and terms to aid in the exercise of vested jurisdictions, no case can be shown under our Federal system where jurisdiction itself is made to depend upon legal usages or practices in England or Germany.

The Senator from Indiana referred to the jurisdiction of our courts in cases of admiralty and equity; but if he reads the Constitution closely he will find the grant refers to cases in equity arising under the laws and Constitution of the United States, and that the admiralty jurisdiction conferred was that only which was exercised in the colonies at the time of their separation from Great Britain, and did not carry with it any power to try crimes which belonged to the same jurisdiction in England. The fourth section of the second article of the Constitution of the United States declares—

> The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, bribery, treason, or other high crimes and misdemeanors.

It is contended that this section is not the source of our jurisdiction in cases of impeachment, but that it was only intended to make the removal of the officers designated compulsory upon the Senate when they were convicted. Some meaning had to be given to the language of this section, and it seems to me that the one assigned to it is so unreasonable and inconsistent with sound argument that it never could have entered into the minds of the framers of the Constitution. It is further contended that this section is not a limitation at all upon the power of impeachment; that that power is without limit, except in respect to the punishment to be imposed. The English parliamentary law does not give us any definition of the offenses which are impeachable. It has left it to Parliament to say for what offenses officers and subjects may be impeached.

Judgment in cases of impeachment under our Constitution shall not extend further than removal from office and disqualification to hold office. One of these two alternatives must follow every conviction in impeachment. Now, whether you disqualify or remove, the same consequence must result to the person in office; he forfeits his position as an officer. Why should the Constitution therefore have devoted a whole section to make it obligatory upon the Senate to do that which must be the result of every conviction without it? Does not every one know that a judgment of disqualification takes effect from the time it is rendered?

Now, inasmuch as English precedents are relied upon, it may be safely said that no example of conviction in a case of impeachment can be found which was not followed by a loss of office when the

offender held one. If the framers of the Constitution were aware that only official offenses gave rise to impeachments in England, they could not have been ignorant that all convictions in such cases were followed by a deprivation of office. Some other reason must be found for the incorporation of the fourth section of the second article into the Constitution besides the necessity of a provision to compel the Senate to remove the officer. The proceedings of the convention throw some light on this subject. It is well known that all the resolutions looking to a frame of Government brought before the convention were submitted to a select committee whose duty it was to report a constitution. This they did on the 6th of August, 1787. In pursuance of a resolution adopted by the convention and looking to the impeachment of the President, the committee on detail, in the tenth article of the Constitution reported, put this provision:

He—

The President—

shall be removed from office on impeachment by the House of Representatives and conviction in the Supreme Court of treason and bribery.

Afterward the Senate was substituted for the Supreme Court. This part of the Constitution elicited some debate. Colonel Mason objected to confining the power of impeachment to treason and bribery. He moved to add after bribery maladministration. Mr. Madison said this term would be too general. Mr. Morris said it would do no harm, as an election every four years would prevent maladministration. Colonel Mason withdrew maladministration and substituted "other high crimes and misdemeanors," and these words were adopted. In the adoption of this substitute there was a compromise between those who advocated an almost unlimited power of impeachment with respect to offenses and those who favored a more restricted power.

Is it not obvious that the convention never dreamed of the idea of compulsory removal. They looked only to jurisdiction. They spoke only of the power of impeachment. The meaning of the section, as understood by the framers of the Constitution, was that the officers designated in it should not be removed from office for any less offenses than treason, bribery, or high crime and misdemeanor. The purpose was to fix and limit as well as they could the powers of the Senate and House. Colonel Mason succeeded in extending the power beyond treason and bribery. Mr. Madison's reasons prevailed, and maladministration was stricken out because it would give too great a power to the Senate.

But suppose the fourth section of the second article is not the source of our jurisdiction, can any reason be assigned for limiting this compulsory duty of removal to civil officers of the United States? The learned managers were forced, I think, to admit—indeed their arguments led irresistibly to the conclusion—that military and naval officers were within the power of impeachment. If so, why was not their removal provided for the same as that of civil officers? Is an admiral or a general of less consequence or more dangerous when they abuse their powers than a custom-house officer or a district judge? It is said that jurisdiction attaches whenever an official offense is committed, but is there no limitation to our jurisdiction in such cases? There is certainly not if the English doctrine is to prevail; for an admiral who neglects the safeguards of the sea or he who commands an army in the field are liable to impeachment according to even the modern law of England. Where do you find the limitation which restricts your power to civil officers? Do you not find it in the fourth section of the second article of the Constitution? Have we not the authority of the Senate sitting as a high court for saying that none but civil officers of the United States can be impeached, or at least removed from office on impeachment?

Whatever may be the doubts in regard to the judgment of the Senate in Blount's case in 1798, there was one question decided in it which shows what was thought of the unlimited power of impeachment insisted upon then as now. The principal question in that case was not whether a person who holds the office of Senator is an officer of the United States, for no one ever denied that a Senator is such an officer; but it was whether or not Senator Blount was a *civil* officer of the United States, so as to give the court jurisdiction over him. Does not everybody see that if the jurisdiction of the Senate and House were not affected by the limitations contained in the fourth section of the second article of the Constitution, which confines the power of impeachment to *civil* officers, that the judgment against jurisdiction in the Blount case could never have been rendered? We have been instructed with long and interesting accounts of the jurisdiction of the English Parliament in cases of impeachment, and it has been said with much force that the history of that body shows that no case of impeachment has been tried there in modern times except for official crime.

But no one has undertaken to show that the English law of impeachment as practiced there at all times did not extend to the Lords and Commons of Parliament. The Senate then had before it in Blount's case an opportunity to exercise the power of impeachment which all must admit belonged to the English Lords. Had Blount been a lord of England and a member of the House of Peers, instead of an American Senator, could he have pleaded the want of jurisdiction in Parliament to try him because he was not a civil officer of the realm? He escaped impeachment before the Senate in 1798, not because he was not an officer of the United States, but because this body, looking to the fourth section of the second article of the Constitution as the source of its power and jurisdiction, decided that he was not a civil officer of the United States. I am at a loss to understand how any man can read the arguments and proceedings in that case without seeing that the whole question at issue was whether or not the article and section of the Constitution just referred to created any limitations on the power of impeachment. The court then decided and had to decide that question. It was in the era when broad claims of power were put forth in behalf of the new Government. It was the era of the alien and sedition laws, on the decline of federalism and the dawn of the pure and wholesome doctrines which Jefferson made immortal by his genius and his name.

Let it be remembered that the very same arguments which are put forth to-day to uphold the unlimited power of impeachment were successfully employed to fasten upon the country the hated maxims of 1798, which culminated in the alien and sedition laws. That broad and fruitful source of power, the common law, was the dark and portentous fountain from which the streams of arbitrary authority emanated, and which for a time threatened to inundate and break down every rampart and barrier of the Constitution. Look to Mr. Madison's report of 1799 and see to what parts of the huge federal structure he directed his magnificent argument. He saw at a glance the foundations of the new and dangerous heresy. He saw that he must demolish the monstrous doctrine that the common law—the barbarous, far-reaching, and unfathomable common law—had been adopted by and incorporated into that Constitution which he had labored so much to create.

At the conclusion of his great argument he said:

Such being the ground of our Revolution, no support or color can be drawn from it for the doctrine that the common law is binding on these States as one society; the doctrine, on the contrary, is evidently repugnant to the fundamental principle of the Revolution. (See Madison's report, page 507.)

Our system of impeachment, as was aptly said by Garrett Davis in Johnson's trial, is *sui generis;* it borrows nothing from the common law. Civil officers of the United States are alone liable to impeachment. The Senate is made the court of impeachment. The Chief Justice must preside when the President is on trial. Two-thirds of the Senators present must concur in a conviction. No impeachment can take place, except for treason, bribery, and other high crimes and misdemeanors. The judgment may extend to removal from office and disqualification to hold office. If it was the purpose of the Constitution to give to the Senate and the House the same power of impeachment which was exercised by the British Parliament, where was the necessity of all these express provisions? It is said that the Constitution intended only to limit the punishment, and has left the English law in full force.

But why designate the officers and the offenses for which they may be impeached? Did not the English law of impeachment extend to all public officers and according to the admissions of the managers authorize the prosecution of all official offenses? Is there a case to be found in all English history of a conviction upon impeachment that was not followed by a loss of office? If there is, I challenge its production. Why, then, should the framers of the Constitution have made removal from office a compulsory duty on the Senate when, under the general power given to it in the Constitution and the interpretation that had ever been put upon it in England and which is claimed to have followed it here, that result was sure to follow every conviction. Mr. Hamilton, who favored a stronger constitution than that adopted, submitted to the convention a plan of government in which he put a provision on the subject of impeachment. That provision contains every element of power which is to be found in our present Constitution on this subject, leaving out the governors of States and Senators, whom he included among the officers subject to impeachment. It is as follows:

Governors, Senators, and all officers of the United States to be liable to impeachment for mal and corrupt conduct, and, upon conviction, to be removed from office and disqualified from holding any place of trust and profit; all impeachments to be tried by a court.

Look now at the language of the fourth section of the second article of our Constitution, and read it in the light of Hamilton's provision:

The President, Vice-President, and all civil officers of the United States, *to be* removed from office on impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors.

I have here substituted the words "to be" for "shall be;" but can any one say that the evident sense and meaning of the Constitution is thereby changed? But it is said the President cannot pardon, and that an officer may escape judgment of disqualification by giving up his office. It is well known that impeachment was intended to extend only to officers who derive their appointments from the executive authority, and if the President could pardon in such cases, the power to remove from office and thus rid the public service of bad men, which is the object of impeachment, might be rendered useless. It was to render the power of removal effectual that the power of pardon was taken away.

But it is said again that disqualification is necessary in order to prevent the return of men to office who have proved themselves unfit for public station. The Constitution does not say that disqualification to hold office shall follow in all cases of impeachment. A discretionary power is given to extend judgment to that extent where jurisdiction exists and a proper case is made for the exercise of the power. The arguments made upon this point are founded in the fal-

lacy that disqualification must attend every conviction. It is said that the right to impose this judgment attaches at the time the offense is committed and cannot by any act of the offender be avoided. Impeachable offenses, unlike those in your crimininal code, are not defined with accuracy. Murder, larceny, arson, and other well-known crimes are so well understood, that proof of certain facts comprising their elements must always lead to the judgment of guilt by every tribunal which is vested with power to try them. Not so with impeachable offenses. The quality and character of these must often depend upon variable circumstances and the temper of the body to which is confided the right of judgment.

Up to this time there is not to be found in English or American law any fixed definition of the words "high crimes and misdemeanors." Mr. Martin, on the trial of Chase, tried hard to limit them to indictable offenses, but his argument met with little favor. Mr. Evarts, on the trial of President Johnson, undertook a like task, with but little better success. Let it be borne in mind that we must test the argument I am combating, not by its application to sporadic or particular cases, but by taking into consideration the whole acknowledged doctrine of impeachment.

One of the most important, and at the same time the most dangerous, features of this power is that it leaves to the two Houses of Congress an arbitrary discretion respecting the acts or conduct which shall subject officers to impeachment. No man knows, no man can know, what is an impeachable offense. To-day it may be one thing, to-morrow another. Judge Humphreys was impeached and expelled from office because he used seditious language. Still he had before him the Constitution, which guarantees to every citizen freedom of speech. My democratic brethren of this body, from whom it has given me no little pain to differ on this great question, tell me that it was not in the power of that indiscreet though it may be honest man to escape judgment of disqualification under the law of impeachment by throwing off the robes of office and standing upon his privileges as a citizen. The language attributed to him, if uttered under ordinary circumstances, would not have been noticed. But the circumstances of the country, the political excitement of the time made his utterances a high crime.

Judge Peck, of Missouri, at a less turbulent period, was impeached by Congress for exercising a like power to that which is claimed for this body as the foundation of its jurisdiction in this case. He was a judicial officer; and he was foolish enough to imagine that, sitting as a district judge, he had a right to exercise the same broad power of punishing contempts that was conferred by the common law, and which had been so long an appendage of the judicial system in England. He made an attorney of his court purge himself of a contempt by answering on oath written interrogatories under pain of imprisonment. I commend the speech of Mr. Buchanan in that case to all who are in need of light on the subject of indefinite powers. Judge Peck was made to feel that there was a provision in our Constitution which did not permit him to compel even an attorney to give evidence against himself. Under the law of impeachment as now understood how can any officer protect himself against those heats and passions of party which are inseparable from popular government if the doctrine of the managers shall prevail?

When it is conceded that an act indifferent in itself, and which the circumstances of the times or the temper of the tribunal may make a high crime, how can it be claimed that jurisdiction to punish attaches in such a case when the act is committed and follows the person through life? In the great majority of offenses called impeachable the quality of the act does not depend, as in ordinary criminal cases, upon definite provisions of law, which leave nothing to discretion. It cannot be said that any offense exists until the body which has the power of impeachment expresses its judgment upon the act arraigned. The criminality of officers' conduct in cases of impeachment is not fixed at the time it takes place, but when the impeaching power applies to it the touch-stone of its variable justice. In the very nature of things different considerations must enter into the idea of impeachable offenses from those which belong to ordinary crimes.

Questions of expediency and policy, which have no place in the criminal law, very often fix the character of an impeachable offense; and expediency and policy admit of no standard of permanency whatever. Still, we have been pointed to an act of Congress making criminal certain specific acts of corruption when done by public officers, and asked to explain the difference between the legal consequences resulting from its violation and those that follow an impeachable offense. Were I before a tribunal less exalted or discriminating than that which now hears me, I might feel some embarrassment in attempting to put aside an analogy which exists only in the similarity of names. The House of Commons in the case of Lord Danby laid down the principle that a minister could not shelter himself behind the throne by pleading obedience to the orders of his sovereign. He is answerable for the justice, the honesty, the utility, and legality of all measures emanating from the Crown.

And thus it is said by Hallam the executive administration is made subordinate in all great matters of policy to the superintendence of Parliament. Mr. Christian, in a note to Blackstone's Commentaries, says:

> When the words "high crimes and misdemeanors" are used in prosecutions by impeachment, the words "high crimes" have no definite signification, but are used merely to give greater solemnity to the charge.

It will not be denied, I suppose, by those who seek to fasten upon us the common-law doctrine of impeachment, that whatever interpretation has been given in England to the words high crimes and misdemeanors, should be adopted here. The law of that country, as we have shown, for purposes of state policy has left in the breast of Parliament the august power of determining what is and what is not an impeachable offense. This power cannot be compared to the cold and measured authority of courts of law, which in all countries is confined to the more simple business of applying pre-existing and well-defined principles of jurisprudence to established facts. The judge who exercises this authority is not the fountain, but the organ of the law. His duty is not to create, but to apply the rule. If the case before him be murder, he is bound to see that the facts established bring it within every part of the definition which the law has given to that high crime. Nothing is left to his own will or discretion. No questions of state policy, no moralizing upon the effects and consequence of the acts of the prisoner can be raised or permitted; and cannot all see the great distinction between that case and the case of an impeachable offense, which is at once ascertained and fixed by the judgment of a political tribunal. Jurisdiction, therefore, in my opinion, cannot be made to depend under our Constitution upon the time when the act is committed, but upon the status of the person, which can alone confer authority on the impeaching tribunal to give to that act by the exercise of parliamentary discretion either the quality of guilt or innocence.

We have been referred to the debates in the convention for light on this subject. The distinguished manager, Mr. HOAR, mentioned an expression used by Mr. Pinckney that the President ought not to be impeached while in office; but he did not tell us all Mr. Pinckney said in the debate. After using the above language, he said:

> I do not see the necessity of impeachments. I am sure they ought not to issue from the Legislature, who would in that case hold them as a rod over the Executive.

Mr. Morris said:

> He was sensible of the necessity of impeachments if the Executive was to continue for any length of time in office. He may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the First Majestrate in foreign pay without being able to guard against it by displacing him.—*Madison Papers*, volume 2, page 1159.

Much has been said in regard to the common-law power of impeachments to show the limitations attending it in England. I put the authority of Mr. Jefferson against that of the managers. In his Manual, on page 284, he says:

> The Lords may not try a Commoner for a capital offense on the information of the king or a private person, because the accused is entitled to a trial by his peers generally; but on accusation by the House of Commons, they may proceed against the delinquent, of whatsoever degree and whatsoever be the nature of the offense.

The managers have argued in support of their theory that according to the English law none but official offenders are impeachable. This they had to do in order to avoid a conclusion which would be fatal to their argument. But let us not forget that we are now endeavoring to ascertain the views of the men who framed the Constitution respecting the power of impeachment in England. No safer authority can be looked to than Mr. Jefferson. He was a representative man of his age and country, and we may confidently affirm that his opinion in regard to the nature of the English power of impeachment was not different from those of the great men who framed the Constitution. He has left us a manual of the parliamentary law of Great Britain which is a text-book in both Houses of Congress. It is referred to as a standard authority in cases of doubt arising under that law. Why should we refuse to accept his clear statement of the English power of impeachmen[1] while we yield implicit faith to all the rest of his opinions upon the subject of parliamentary law? Impeachment in England has always been governed by the law of Parliament, and we can no more disregard the authority of this great man upon the question now under consideration than we can his equally correct explanation of the "previous question" and its uses in the House of Commons.

Mr. Jefferson tells us plainly that on accusation by the House of Commons by impeachment they may proceed against the delinquent of whatsoever degree and whatsoever be the nature of his offense. This authority refutes the doctrine of the managers that none but official offenders are impeachable in England. True it may be that this despotic power has not in modern times been put in force against individuals, but we are not interested so much in ascertaining what Parliament has done as what it may do in exercising the power of impeachment.

The Senator from Delaware alluded to the fact that Mr. Justice Blackstone's Commentaries were familiar to the framers of our Constitution and that the law of England, as laid down by that great writer, was well understood in this country at the time of our revolution. All this is true, and yet no argument can be drawn from it in support of the jurisdiction claimed in this case. If the men of the revolution had followed the teaching of Blackstone they never would have resisted the august authority of Parliament which that great lawyer had taught them was competent to legislate for the colonies without their consent. Have we any more reason to think that the framers of the Constitution accepted Blackstone's doctrines of impeachment than for believing that his opinions respecting the power of Parliament to make laws for Virginia and Massachusetts were regarded as sound, pure, and correct?

Blackstone is excellent authority upon nearly all questions which he has discussed; but there are some matters which he has presented to us which can only excite our abhorrence. His personal example as a guardian of the rights of the people cannot certainly command admiration. He wrote a great book which will live forever as a monument of his genius, learning, and industry; but during his short career as a statesman in Parliament he showed by a base desertion of his own principles that the most enlightened understanding ever given to man was not capable of resisting the influence of party and power when called upon to decide between the rights of the subject and the unwarranted pretensions of the Crown. Well might Junius have said to him, when speaking of his action in the case of Mr. Wilkes:

Your learning ought to teach you, my lord, that laws are intended to guard against what men may do, and not what they will do.

It is evident from the course of the argument in support of jurisdiction in this case that the power claimed for the Senate must be derived from the second section of the first article of the Constitution, or it cannot be found at all. I have endeavored to show that this provision of the Constitution is not the source of jurisdiction in cases of impeachment, and that all our power in such cases must be derived from the fourth section of the second article, which confines our jurisdiction to the President, Vice-President, and all civil officers of the United States. The construction for which I contend, while consistent with the true theory of the Federal Government, gives effect to every provision of the Constitution on the subject of impeachment.

It leaves to the House of Representatives the sole power of originating and prosecuting the charges or accusation. It gives to the Senate the sole power of trial and judgment, but it limits the power of impeachment, like the judicial and every other power in the Constitution, to the expressly enumerated cases prescribed in the fourth section of the second article. This section confines our power to the President, Vice-President, and all civil officers of the United States, and provides for their removal from office on conviction of the offenses designated in it.

But it is contended that this is not the true construction of the fourth section; that the object of this provision was to make removal from office imperative on the Senate, as before stated in my argument. In other words, this is the judgment clause, so far as removal from office is concerned.

But we have been told that there is another judgment clause in the Constitution relating to the same subject. I refer to the seventh clause of section 3, article 1, of the Constitution, which is as follows:

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

This clause has had great weight in the argument in favor of jurisdiction because it permits the Senate to disqualify the offender. The Constitution first provides what body should prefer the charge; then it provides the tribunal which shall try it, the persons who shall be subject to impeachment, and the judgment which shall be rendered in case of conviction. By construing the fourth section of the second article as a judgment instead of a jurisdictional clause, you destroy the harmony and logic of this arrangement.

But if this provision was only intended as a judgment clause why did not the framers of the Constitution incorporate into it all that they intended to say upon the subject of judgments in cases of impeachment? They put into the Constitution a distinct clause relating to judgments in such cases, and in it they provided for the same removal from office which it is contended the fourth section of the second article was intended only to secure. A statement of this proposition is enough to show that the construction contended for by the managers cannot be correct.

The people, we are told, will not allow this power to be employed for oppressions. Sir, my limited reading has taught me to look for securities for our liberties to a very different quarter. "Put not your trust in princes" is a maxim which will apply to all men in power. If this argument is good at all, it only proves that there is no necessity for any restrictions on public authority. But have we not examples enough to show us that the weakest and most unreliable security against oppression is the supposed justice and moderation of public men.

Some of the greatest and purest men that ever lived in this country were charged with having committed oppression. Judge Chase was an able and a pure man. No charge of corruption was ever brought to his door. Still we are told that he was a judicial tyrant, and that the liberties of the citizens were not safe in his hands. General Jackson was the purest of the pure. His uprightness and honor were never questioned. And yet he did not escape the imputation of having disregarded the laws. Go back to 1798, and look at the policy of oppression which was then inaugurated under the alien and sedition laws, and by the greatest and purest men of that day.

Look to the case of Matthew Lyon, of Vermont, a member of Congress, who for a mild criticism on the policy of the men in power was thrown into prison by a judge of the Supreme Court and subjected to a heavy fine. He thought the liberty of speech and of the press was safe in the hands of those who had undertaken to uphold the Constitution! But he realized his folly in the darkness of his dungeon and by the clinking of his chains. The nefarious law under which that innocent man suffered was advocated in Congress and maintained before the country by the very same arguments which have been used in support of the common-law power of impeachment, and I adopt here as part of my argument the speech of Mr. Otis in 1798, to show that the doctrine I am now combating is the same which he then advocated in order to muzzle the press and gag the mouths of the people. He said emphatically that the common law of England might be looked to for the purpose of ascertaining the meaning of impeachment, and in almost the same breath contended that the same law relating to libels was part of the jurisprudence of the United States.

Mr. President, the more I reflect upon the character of this common-law jurisdiction the more I am shocked at it. All the caution and guarded language of the managers cannot keep it within limits which are safe or reasonable. Mr. Manager HOAR says, on page 17 of his argument:

It is well settled that all abuses of official trust are impeachable in Parliament. At common law there is no limit as to person; there is no limit as to time; there is no restriction as to the character of the punishment, save the discretion of the two Houses.

The power is here fairly stated. Will Senators answer me what is official trust within the meaning of the British law? Was it not asserted in Hastings's trial that any dereliction of duty which affected even remotely the honor or the interests of the empire came within the jurisdiction of Parliament? Do you not remember that Hastings claimed that he was not subject to impeachment because he was an officer of a chartered company whose rights and privileges were distinct from those of the Crown? He was a servant of a company of merchants to whose trading privileges were added powers of government. He was not appointed or commissioned by the Crown, and all his actions in India were approved by the company which invested him with power.

I speak of this to show that all persons in any way connected with public interests, whether their power emanate from the government or not, are subject to impeachment in England. Now it is said that the sole power of impeachment delegated by the people of the United States to the Senate and House of Representatives is to be regarded in the same light as all other positive grants of authority to this Government, the same as the power to make war, coin money, &c. The power of impeachment in England is co-extensive with the whole empire, and reaches every officer connected with the public service, whether local or colonial. If this power has, as is claimed, been delegated to the United States, how can the States exercise any part of it? The power to regulate commerce, the power to make war, the power to coin money, and the sole power of impeachment are all vested in this Government. If this power is not to be confined to officers of the United States, as we contend, according to the fourth section of the second article of the Constitution, why may it not be made to operate upon the officers of States the same as the English power upon the officers of the East India Company or those of the government of Canada?

Do not the governors and officers of States owe as much to this Government as Hastings did to that of Great Britain? All State officers are obliged to take an oath to support the Constitution of the United States, and the violation of such an obligation on the part of a public officer is just as much impeachable as any offense that can be mentioned.

What reasons can be given for making a distinction between the sole power to make war and raise armies and the sole power of impeachment as it exists in England? The States cannot make war, raise armies, or regulate commerce. Why? Because these powers are delegated to Congress. But the sole power of impeachment is given to the same bodies in language equally as broad as in the other cases. Why will not the same rule of construction apply to both? The governors and other officers of States may violate the Constitution of the United States as well as officers of the General Government. The Constitution of the Union makes it the duty of the executive of a State, upon demand of another executive, to deliver up a fugitive from justice. If this duty is violated, why may not the officer be impeached by Congress, according to English precedents?

A governor of a State may commit treason against the United States. Surely that would be an impeachable offense. Why not remove him? But I know it will be said that the power of impeachment in the Constitution of the United States must be confined to officers of the United States. But why restrict the power here more than in England? No reason or argument can be made or assigned for such restriction that is not derived from the fourth section of the second article of the Constitution, which confines this power to civil officers of the United States. I have always thought that any power which Judge Story said did not belong to the General Government no one could prove to exist. No man who reads his views upon the subject now under consideration can doubt for one moment how he would have decided the question if it had been before him as a judge. Mr. Curtis, in his Commentaries, speaks out explicitly. He says:

Impeachment is not necessarily a trial for crime, its purposes lie wholly beyond the penalties of the statute or customary law; it is a proceeding to ascertain whether cause exists for removing a public officer from office.

He says that such cause of removal may exist where no offence against public law has been committed, and instances imbecility and maladministration as crimes of removal. (Curtis on the Constitution, page 360.)

That careful writer, Chancellor Kent, speaking of impeachment, says:

The President, Vice-President, and all civil officers of the United States may be impeached by the House of Representatives for treason, bribery, and other high crimes and misdemeanors, and, upon conviction by the Senate, removed from office. (1 Kent's Commentaries, page 302.)

Is it not plain that this great discriminating lawyer looked only to the fourth section of the second article of the Constitution as the source of this power?

In the same work he discusses at great length the common-law jurisdiction of the courts of the United States, but it never occurred to him that there was such a thing under our Constitution as common-law jurisdiction in cases of impeachment.

Mr. President, it cannot be forgotten that this Government when first put in operation was regarded as an experiment. It was watched over with great anxiety by its friends and elicited the most gloomy forebodings from its enemies. Some thought it had too much power, others that it had too little. But there was a little band of patriots and statesmen who fondly imagined that it was the most perfect institution of the kind that had ever been created. Those men were not admirers of England or of English government. They thought and felt that the refinements and tyranny of the feudal system were not well adapted to the free spirit of America. They favored strict limitations on all powers which touched the liberty, life, or property of the citizen. They were for freedom regulated by law; but they cherished a fierce enmity against all undefined power. Foremost among these stood Jefferson and Madison. The one had breathed into the Declaration of Independence the spirit of the purest liberty. The other carried it down as Franklin did the lightning of heaven, applied it to practical purposes by making it the foundation of a written constitution. When the fortunes of party had placed the noble work of these great founders of our Constitution in hands which they considered unfriendly to its principles, they watched over its convulsive and irregular operations with the same care and solicitude that the most devoted parent would watch the progress of disease when it seizes the health and vigor of his offspring.

In 1798, when the same claim of power in cases of impeachment which is set up to-day was asserted, the subject attracted the notice of Jefferson and Madison. This common-law doctrine of impeachment put forth at that day, and now resuscitated, was denounced by Madison as the most extravagant folly of the period. The correspondence is here before me, and I will read it for the information of the Senate, and I believe that the conclusion at which I have arrived which denies jurisdiction in this case is in strict accordance with the principles of those distinguished men, and is the true constitutional doctrine on the subject.

This correspondence has reference to the trial of Senator Blount, the first case of impeachment which occurred under our Constitution. I stated that this trial took place in the era of the alien and sedition laws. The Federal party was in power. The managers in that case contended for a like construction of the Constitution to that which the present managers contend for.

It was then insisted, as it is now, that the fourth section of the second article of the Constitution was not the source of jurisdiction, but that the second section of the first article conferred upon the Senate and House the common-law power of impeachment.

There is, however, a great difference in one respect between the arguments of the managers in the Blount case and the arguments here. There it was admitted that the common-law power of impeachment contended for extended to all persons and all officers, State and Federal. Here it is denied that it can be extended to private persons, but properly applies only to official offenses. But is there not in this very difference of opinion respecting this power enough to induce us to disregard both it and its source? This shows the danger of relying upon construction in cases like this.

The managers in 1798 stated, I think, the true common-law doctrine, and they claimed for this Government nothing but what was included in it, as they understood the English law. But the present managers, looking to the very same provision of the Constitution for jurisdiction which the former did, in deference, I suppose, to the advanced spirit of the age, tell us that the common law has always limited impeachments to official crime. The letter of Mr. Madison which I will now read alludes to the claim of power set up by the managers in Blount's case, and I have shown that the very same provision of the Constitution was invoked to sustain it which is relied upon by the managers here. Still Mr. Madison characterizes the claim of power set up in 1798 "as the most extravagant novelty yet broached" by that party which carried through Congress in the same year the alien and sedition laws. Here is his letter to Thomas Jefferson:

MARCH 4, 1798.

DEAR SIR: Mr. Tazewell's speech is really an able one in defense of his proposition to associate juries with the Senate in case of impeachment. His views of the subject are so new to me that I ought not to decide on them without more examination than I have had time for. My impression has always been that impeachments were somewhat *sui generis*, and exclude the use of juries. The terms of the amendment to the Constitution are indeed strong, and Mr. T. has given them, as the French say, all their *lustre*. But it is at least questionable whether an application of that amendment to the case of impeachments would not push his doctrine further than he himself would be disposed to follow it.

It would seem also that the reservation of an ordinary trial by a jury must strongly imply that an impeachment was not to be a trial by jury.

As removal and disqualification, the punishments within the impeaching jurisdiction, were chiefly intended for offices in the executive line, would it not also be difficult to exclude executive influence from the choice of juries; or would juries armed with the impeaching power and under the influence of an unimpeachable tribunal be less formidable than the power as hitherto understood to be modified?

The universality of this power is the most extravagant novelty that has been yet broached, especially coming from a quarter that denies the impeachability of a Senator. Hardy as these innovators are, I cannot believe they will venture yet to hold this inconsistent and insulting language to the public. If the conduct and sentiments of the Senate on some occasions were to be regarded as the natural and permanent fruit of the institution, they ought to produce not only disgust, but despair, in all who are really attached to free government. But I cannot help ascribing some part of the evil to personal characters, and a great deal of it to the present spirit of the constituents of the Senate.

Whenever the State legislatures resume the tone natural to them, it will probably be seen that the tone of their representatives will vary also. If it should not, the inference will then be unavoidable that the present constitution of the Senate is at war with the public liberty.

A few of the grave inconsistencies resulting from the arguments of the managers I will now enumerate:

First. We are told that our jurisdiction is derived from the second section of the first article of the Constitution.

Second. That it is to be governed only by the limitations attending the exercise of the impeaching power in England, namely, official offenses.

Third. That the fourth section of the second article of the Constitution is not a limitation upon the power of impeachment, but only a mandatory provision to compel the Senate to remove the officers therein named when convicted.

According to this argument, the broad power of impeachment exists under our Constitution the same as in England. Therefore all officers of every description, high and low, State and municipal, are subject to this power, because they are subject in England.

2. The power of removal given in the fourth section of the second article can only operate on the class of officers named in it, all civil officers of the United States; but every other description, naval and military, &c., State and municipal, do not come under the provisions of this section, and they may be dealt with according to a different rule. If they are convicted of treason or bribery, the Senate is not compelled to remove them, but may censure them and let them go their way and sin no more.

Again, the crimes, treason, bribery, and high crimes and misdemeanors, specified in the fourth section of the second article, cannot, according to the argument, be regarded except for the purpose of furnishing grounds for the simple removal of civil officers of the United States. In all other cases we are not bound to look to the Constitution for the offenses which will justify impeachments, but must be guided by the unlimited theories of the common law. Hence we have two different and distinct rules made applicable to persons subject to impeachment under our Constitution.

In the case of a civil officer, whose removal is imperative when convicted of treason or bribery, the Constitution has placed some limitations upon the power of removal. In the case of a naval or military officer, or Senators or Representatives, all of whom are within the common-law power of impeachment, and beyond the protection of the fourth section of the second article, they are at the absolute mercy of the impeaching power and may be dealt with at the discretion of the Senate and the House. These conclusions are inevitable from the arguments of the managers, and to this doctrine I never will subscribe.

Mr. President, if there was no other argument against the exercise of this dangerous jurisdiction than that which is founded upon the absence of a single precedent to sustain it, that argument would be sufficient for me. Cases have arisen in our history which called for the exercise of this power. Why was it not put in practice? From the origin of the Government until the present hour not a single instance can be shown of an impeachment of an officer after he left office. Does not this amount to a construction of the Constitution? And why should a construction so long acquiesced in be departed from now?

Mr. Manager HOAR says that this Government has no securities to throw away. I say, sir, that the greatest danger to which the Government is exposed is in the gradual usurpation of powers not delegated to it. The people have been made so familiar with excesses of authority until they seem indisposed to question for a moment the power of the Government to do whatever it pleases. Placed here as a judge in a case confessedly criminal, with a special oath resting upon my conscience to obey the Constitution as I understand it, I shall not consider for one moment what the world may think of the judgment I now give. My opinion may be founded in error. I claim no infallibility for my judgment, but after the most patient and anxious consideration of this great question, after looking for light to guide my poor understanding in every quarter where I thought it could be found, and with no feeling of party or of prejudice, I unhesitatingly say that in my opinion the Senate sitting as a high court of impeachment has no jurisdiction under the Constitution of this case.

I am not insensible of the greatness of this occasion or of the importance of having safeguards to secure the interests of the people; neither am I indifferent to the great danger of resorting to the exercise of loose constructive powers, however desirable they may be. I cannot forget that I live under a Government which rests upon the broad foundation of popular rights; that I am in the councils of a country where the people are all powerful as well as all just, and that the surest guarantee for the efficiency and purity of our public ad

ministrations is to be found in the virtue and honesty of those whose interests alone are involved in their degradation and elevation. Nor am I able to see that those maxims and principles which were made to curb the power of royalty and hereditary tenures have any application to a government in which all offices are derived from the people, and all but the judicial are subject to the control of law. I am not unmindful of the fact that even in the purer and better days of the Republic the people were conversant with the dangers to be apprehended from corrupt officials. But I cannot banish from my recollection what the history of all past times has engraven upon my mind, that in providing securities against the inroads of official criminals such an end is dearly purchased when it is reached by a sacrifice of the liberties of the people.

Opinion of Mr. Bogy,

Delivered May 27, 1876.

Mr. BOGY. Mr. President, it was not my intention at the beginning of this discussion to say anything. On the contrary, I had decided to give a silent vote. And I would not now alter this purpose if I had not become satisfied from what has been said by certain Senators during the course of the debate that in this preliminary question of jurisdiction was involved virtually the decision of the greater question whether the party impeached was guilty or not guilty. This being so, and viewing the subject, as one of the most important which can be presented to the decision of the Senate, I feel it to be my duty to give the reasons which control my vote. What we decide—indeed, what we say in this discussion, although only one of jurisdiction—will be looked to as a precedent, and quoted in aftertimes. The question cannot be said to be entirely new, yet it is the first time it has been presented to this body for decision. As it is the first time so it may be, perhaps, the last. We are now to decide whether the impeachment of anybody, whether in office or out of office, whether a civil officer or not, can ever hereafter be tried. We are now called upon to pass on the question whether there is such a remedy provided by the Constitution to check and arrest official corruption. I do not wish to state the question too broadly. I desire to be correct. Although not attaching any particular importance to my opinions as an individual, I am not unmindful of the fact that the opinions of each and all of us will be quoted hereafter. We must not forget that we are Senators, and that the seats we now occupy will be occupied by others when we shall have left them. Upon us the Constitution has devolved the decision of this question, and, as already stated, it will to a great extent be final. At great length, and I may say with great ability, has it been discussed. It will not be my purpose to follow the example set before me by several Senators. My intention is to be brief. I do not attach any importance to the large number of impeachments and political trials which took place some five hundred years ago in England under the reigns of John, Henry III, and Edward I. All men at all acquainted with history know the political condition of that country during that period; an endless contest for mastery between the nobility, headed by the great barons, and the king, both parties being compelled to introduce as much foreign influence as possible as help in the contest. The king was surrounded with foreigners from France, Italy, and Spain; and on their side the barons had their foreign mercenaries and secret foreign auxiliaries. In fine, the result was that internal confusion and disorder were the order of the day. Parliament was gradually assuming form, shape, and power. Elections were yet, however, irregular, and partook largely of the condition of the political disorder. Faction necessarily ruled, and the faction in power did not hesitate to bring to trial its adversaries. Hence history records many bloody trials, the shame and disgrace of this period of English history. Senators have argued that these trials were, however, sanctioned by the common law, and that if we admit that the common law was introduced into the Constitution by the provision in relation to impeachment, that we not only sanction these bloody and shameful trials, but that we thereby authorize the same in this country at this day. I must say, Mr. President, that such arguments took me by surprise. No one contends that the common law is a part and parcel of the law of the Constitution in the sense that it is a part and underlies the system of the States. The States existed before the Constitution, and the English colonists brought with them from their mother country the common law and implanted it into the colonies, and hence this old common law permeates the systems of the States. But the Constitution was an instrument made by the States for a definite purpose and with certain defined powers. The common law is not a part of the Constitution unless it is put there by express provision. And when this is so, it is subject to all the limitations of the Constitution.

The second section of article 1 says the House of Representatives shall have the sole power of impeachment.

The first question which necessarily presents itself to the mind is, what is impeachment? And how can the question be answered without going to the common law for the exposition; it being the fountain, the great head-source from whence all our system flows? The framers of the Constitution were the sons and descendants of Englishmen, the only country up to that day that had made any decided advance toward liberty and a government of regulated powers. For although it is true that there was not and is not now a written constitution in England, yet it had at that day, and had had for centuries before, its great Magna Charta and other well-defined and well-secured privileges, all tending to a well-regulated system of free government. Although it was a monarchy and had its nobility, nevertheless it was in advance of the other countries of Europe in securing to the individual man his personal rights. From the days of Henry III to the time of the adoption of our Constitution the progress made in England toward good government was immense. The common law—the old customs and usages of the primitive inhabitants of the island of Britain—had been molded and shaped by the great judges who at different periods of time graced the bench, and the no less great lawyers who adorned its bar, Holt, Bacon, Coke, Selden, Plowden, and hosts of others, bench, bar, and great publicists had so shaped and crystallized those old customs that at the period of the formation of our Constitution the old *lex non scripta* had become *lex scripta*. There was not a principle of the common law but what became written law, and the crimes and bloody trials which had taken place in the Parliaments of England five hundred years before were not possible at the time of the adoption of our Constitution—no more possible then than now. In this respect there has been no progress, and perhaps there was room for none. At the time we adopted the word impeachment in our Constitution we adopted it as it was understood at that day in England. A reference to the debates in the convention will show this. The framers of the Constitution looked to no other country. The word impeachment is said by Webster, in his Dictionary, to be derived from the French, and means to hinder, to check, to prevent; yet its legal meaning was given to it by the common law, as much so as the word indictment.

Indeed, unless we go to the common law for its meaning and interpretation, it has no meaning at all, and the power granted to impeach would amount to nothing. No rule of construction will justify us in saying this. The ability, the character, the well-known reputation of the great men who framed our Constitution forbid this. The object was to confer a power, and a substantial one, to protect the people from corrupt officials. In England at that day an impeachment was a proceeding originating in the House of Commons charging in proper form official malfeasance. Who was thus chargeable is not at this day important, beyond the fact that all civil officers guilty of corruption while in office were impeachable. Whether military and naval men were or were not is of no consequence. It is enough to know that civilians were liable, for offenses committed while in office. Much has been said about military and naval officers not being impeachable. About this, I wish to be distinctly understood as not committing myself. I can see many good reasons why the leaders of our armies and the admirals of our Navy should be subject to trial by impeachment; but desiring to be as brief as possible I will not argue that point, and will leave it an open question. The time may come when it may become most important.

Section 2, first article of the Constitution, says:

> The House of Representatives shall have the sole power of impeachment.

The power, the sole power. No other body. No other tribunal has that power; and why? Because the House is the direct and immediate body in which the people are represented. It is there that they speak their potential voice. It is there that the Constitution gives to the people, through their Representatives, the power to call to account the guilty officer—the officer who has either betrayed his country, has received a bribe, has been guilty of high crimes and misdemeanors, affecting the public welfare; and I would ask where could a power of this kind be better lodged than there?

As the sole power to impeach was given to the people, acting through the House, the sole power to try was given to the Senate. If the House has the power to impeach, it is the duty of the Senate to try. The limit of power in one is the limit in the other. If the House cannot impeach, the Senate cannot try; and if the House has the right to impeach, it is the imperative duty of the Senate to try. For the extent of this power we must necessarily go to the common law as understood at the time. We were certainly introducing an English system—well known there, well understood, and about which the legal minds of that country had already much written.

It is a significant fact that at that very time the most celebrated trial by impeachment known to the world was going on, a trial whose celebrity grew out of the character of the man who was charged—the interesting country over which he was said to have tyrannized, the remarkable men engaged both in its prosecution and its defense—the trial of Warren Hastings, was at that very time pending before the British Parliament. Who was Hastings? A Senator dwelt at some length on the fact that he was not an officer of the Crown, but of a private company. While it is true that the governor-general of India was, under certain conditions and limitations, appointed by the East India Company, he nevertheless was an officer of the British Empire. While the gains and profits might belong to the private company, the sovereignty of the countries subjugated belonged to the Crown. He was or had been a British officer, and it was as such he was brought before the House of Commons. As already stated, it is not important in this discussion to decide who all were or were not liable to impeachment in England; it is sufficient to say that there a civil officer, as was Warren Hastings, was considered lia-

ble to be tried. He was a civil officer who had been removed from office—for he did not resign, he was recalled and removed; and was impeached the year after his return to England. This great trial then going on in England to my mind is sufficient to explain what the framers of the Constitution meant. But, in addition to this, we have the words of the Constitution itself.

It is very plain to me that when you examine critically the power given to impeach and to try, that the President as well as any other person holding office is subject to impeachment. I have heard it said during this discussion that as the king in England could not be impeached, so the President in this country was also not impeachable. To my mind this is not correct. While it is true that in England the king could not be impeached, for the reason that his office is hereditary, and as king he can do no wrong and is not responsible; therefore he could not be tried, because he was beyond the reach of the law. But this is not so with regard to the President. Here he can do wrong, and for which he is responsible; elected by the people, and not hereditary. In this country he is, like any other officer, subject to the same laws and equally responsible. Therefore I am satisfied he is impeachable under the first section. Again, as this section provides that when the President is tried the Chief Justice shall preside, it must be that it was intended to include him as one of the officers thus liable. I see no reason why he should not be liable to impeachment, but very good ones why he should be, and as his name of office is mentioned in connection with a trial, I take it that he was subject to this mode of trial the same as any other person holding office. It is said in this first article that judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold any office. Leaving it optional with the Senate to impose one or both of those punishments, a party convicted may be removed and not disqualified, he may be removed and disqualified, or he may be disqualified without being removed, and if he is not in office he of course cannot be removed, it being a question of discretion with the Senate sitting as a court. I wish this fact to be well understood, that the Senate has an undoubted discretion as to the judgment. Whether it be considered a punishment or not there is a diversity of opinion, but whether it be from my stand-point makes no difference, the discretion certainly exists. Now if the Constitution had stopped there the power of impeachment would have been complete, the power to try no less so, the power to give judgment in its discretion equally so, complete in every respect. But we must not forget that this remedy by impeachment was a great weapon placed in the hands of the people, to be used for their benefit, and by them to be employed to clean the Augean stables of the filth and manure of the bulls and oxen that might be found occupying the public stables. Hence the further provision was made, fourth section, second article, that in the event the President, Vice-President, or any civil officer be found guilty, he shall be removed; therefore when either of these persons was in office, there was no discretion as far as removal was concerned, evidently showing that there might be a class of persons, if convicted, toward whom no discretion existed, and another class toward whom there was discretion. These two classes are first the persons who, while in office, commit a crime and do not remain in office, and the other who is yet in office. I therefore consider that this fourth section of the second article does not give jurisdiction, nor limit it, and has nothing to do with the question of jurisdiction, but is only mandatory.

This last section, to my mind, is proof positive that persons out of office can be impeached; otherwise there could be no case in which to exercise the discretion evidently given by the first section.

No one can doubt that it was the intention of the framers of the Constitution to confer the power of impeachment of some character or other. Let the character of the power be what it may, or the class of persons who may be embraced within it be who they may, a power of this nature was evidently conferred. I repeat it, for it cannot be repeated too often, this was intended to be a great power, placed in the hands of the representatives of the people for their protection against corrupt and venal officials. Now, if it is true that this power thus conferred can be defeated by the guilty official resigning, it might as well not have been put in the Constitution. Resignation will follow the detection of guilt in every instance; and thus although it might be that a Secretary of State may have betrayed his country to a foreign power, or the Secretary of the Treasury stolen millions of the public money, or any other officer from the President down shamefully disgraced his office, or a judge publicly sold justice from the bench, it matters not who the officer may be or what he may have done, all he has to do as soon as the fact is found out is to hand in his resignation, and he can go scot-free as far as this remedy is concerned. It is true he may be tried by a court. But I believe that when the day comes that the Senate will decline to try a guilty official, and, as in this case, one who admits his guilt, but to avoid impeachment has resigned the office which he abused, the day will have come when it will not be very difficult to get out of the clutches of a court. We all know how cases are continued and postponed and how juries are formed. Let a guilty man escape the punishment prescribed by the people's remedy of impeachment, and to my mind you will proclaim a saturnalia for all rogues and villains to step forward and help themselves. My hope, my only hope will then be in the people; and it is to them I will feel it my duty to appeal to restore this great popular remedy. We cannot submit to be governed by rogues and villains. The thieves must be driven from power; and, Mr. President, I desire you and the Senators around me to remember that whenever the fact is made known to the people that it has been decided that a guilty man can escape trial by impeachment merely by resigning his office, they will take steps to correct this decision.

Although there may be a majority for the jurisdiction, yet if there is one-third opposed to it, I am satisfied from what has been said that an effort will be made to get the party charged acquitted on the ground that those who are opposed to jurisdiction cannot vote for conviction. Let this be done, and in my opinion a storm will be let loose that will sweep over this land, and as it passes over the valleys and mountains and plains, there will be heard in the distance the majestic voice of the people crying aloud for a restoration of this, the people's remedy, with which alone they can drive from office the villains and thieves who may have fattened at the public crib.

Opinion of Mr. Booth,

Delivered May 27, 1876.

Mr. BOOTH. Mr. President, two theories of impeachment as applicable to the question before us are submitted, one of which we must adopt, for no other seems to be possible; and yet to my mind neither is entirely consistent with all the provisions of the Constitution and their accepted construction.

After listening to one of the ablest debates it has ever been my privilege to hear, I am compelled to the conclusion that the doubt exists in the Constitution itself, and arises from the fact that the convention did not consider the whole subject of impeachment and determine all its provisions at one time, but agreed upon each with reference to a special object; and the difficulty is insuperable in the attempt to reduce uncertainty to certainty.

The theory in favor of jurisdiction is that the term impeachment in our Constitution does not mean simply form of accusation, but imports the whole of the common law in reference to impeachable persons and impeachable offenses, giving to Congress the exact jurisdiction which was held by Parliament, and vesting in it plenary power of punishment, restricted only by all these by the provisions of the Constitution; that is, that the use of the word impeachment in providing for a method of accusation and trial is a grant to Congress of all the power which could be exercised by the British Parliament on that subject, and that subsequent provisions, when not definitions of the methods of its exercise, are restrictions upon the grant.

In support of this theory as to definition, it might be suggested that the first clause in reference to the subject reads:

> The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

The word "Speaker" in the same clause is purely technical. It is not defined directly or indirectly by its use in any other connection. We are obliged to go to the British Parliament for its meaning. So far as I know, the House of Commons is the only parliamentary body in the world that had ever designated its presiding officer by that name, or a translation of it. Like many other words, it has drifted so far from its origin that the Speaker of the House is the only member who cannot speak. When he speaks he is not the "Speaker." To make the argument drawn from this complete, it must follow that the presiding officer of the House of Representatives, by the use of the word speaker is invested with all the prescriptive rights and functions of the speaker of the House of Commons.

That part of the sixth clause of the third section which provides that "the Senate shall have sole power to try all impeachments" is only important in this connection as indicating that the common-law idea was a controlling one in the mind of the convention as shown in adopting a method of trial similar to that of Parliament. True this was done after other methods were discussed, but its final adoption is evidence of a disposition to keep within the line of precedent.

I pass for the present to the next and immediately following clause in the Constitution:

> Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States, &c.

This clause seems to me the strongest corroboration of the common-law theory of jurisdiction to be found in the Constitution. It is restrictive. Restrictive upon what? Certainly not upon any subsequent clause of the Constitution, for the Constitution was to be operative as a whole—all taking effect at one time. It would be absurd for a convention making a constitution to attempt to-day to restrict its own action to-morrow, when its whole work was to be adopted or rejected by the people as one instrument. And if after agreeing upon these words they had adopted a subsequent provision that the President of the United States upon impeachment for and conviction of treason should suffer death, by a well-known rule of construction the latter clause would prevail.

There are no affirmative words in this portion of the clause; it is prohibitory. It is doubtful if under such a clause in a statute a criminal court could pronounce any judgment, unless a general or specific power to pronounce any or some judgment were elsewhere conferred.

It may be argued that it is permissive, but a criminal court takes nothing by implication. The clause, however, is consistent with the theory that the Senate was already clothed with the general power of punishment which attached to the House of Peers, and these words were restrictive of that power. To my mind this sentence must have meant this at the time and in the connection in which it was used, or it was designed as a limitation upon the power of Congress to enact statutory penalties for impeachable offenses.

Being a restriction upon punishment, it must have been a restriction upon a power to punish then *in esse*, or a restriction upon a power to create penalties.

Section 4 of the third article is susceptible of a construction consistent with this theory. It reads:

> The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

The nautral meaning of the words "shall be removed from office on impeachment for," &c., is that these persons were before that subject to impeachment. The grammatical meaning of the sentence, leaving out all question of legal construction, is that removal from office is mandatory in the cases enumerated. To invoke the rule of construction in this view, *inclusio unius, exclusio alterius*, seems to me to be a *petitio principii*, for whether this sentence is to be construed as inclusive and exclusive as to parties or mandatory as to punishment is the whole question at issue. If the latter be the true meaning, it certainly includes all persons who can suffer that punishment, and there is no room *exclusio alterius*.

It is to be borne in mind, also, that the authors of the Constitution were familiar with the common law or *lex Parliamenti* of impeachment; that it was consciously or unconsciously in their minds as the basis of their proceeding.

Whether they desired to fit a known instrument to their purpose or to invent a new one they would use common-law terms. They lived, so to speak, in the atmosphere of the common law, and thought in its language. If they had said "the President, Vice-President, and all civil officers of the United States shall be subject to impeachment for treason, bribery, and other high crimes and misdemeanors committed in office, and upon conviction thereof they shall be removed from office and may be disqualified from holding office under the United States," I, at least, should have had less difficulty than I have with this case.

So far this "common law" theory seems consistent with itself; that is, that in the subject of impeachment the whole power and jurisdiction of the British Parliament is vested in Congress; that the methods of their exercise are prescribed; that there is no limitation except that imputed by the word impeachment itself, *ex vi termini*, as to persons and offenses; that punishment is restricted to removal from office and disqualification to hold; and that removal from office must follow the conviction of one holding office at time of conviction.

I am compelled to the admission that I believe this would have been the interpretation of the provisions upon this subject by the men who in convention assembled gave expression to the Constitution of the United States if they had been called upon to express an opinion, and not to make a judicial determination; and, if the meaning of the Constitution is to be ascertained simply by that kind of "mind-reading," that is the interpretation we must adopt. For myself I do not think this the true rule for interpreting a constitution. The Constitution did not live until adopted by the people of the States. We must consider their ideas as well as the convention's. It lives now by, for, and through the people of to-day. It is for them, not they for it. We must calculate its meaning in the light of events, by judicial decisions, by the meridian of 1876 as well as 1789. The Constitution of the United States is not dead, but living. If it were an incrustation, not a living body, it would long since have stifled this nation or been destroyed by it.

To suppose that its authors could have anticipated the wants and necessities of coming times and provided for the exigencies of human life in this everincreasing volume in fixed and unchanging terms would be to attribute to them omniscient wisdom.

I wish to state the paradox as my belief that the Supreme Court of the United States, that this body to-day understands the Constitution of the United States in its application to affairs as they are better than the convention which framed it, and this generation far better than the generation which adopted it; as much better as the courts now understand the statute of frauds in its application to present transactions than it was understood by the Parliament which adopted it, or as the people do the rights protected by *habeas corpus* than the generation did when they were first vouchsafed that great writ for their protection.

The difficulty in the common-law theory lies at the foundation. To make it consistent with what is accepted upon all sides as the law governing us, and what has been at least assumed to be the law in every impeachment trial in this country, impeachment at common law must have been restricted to offenses committed in office. The history of impeachment in Great Britain not only fails to sustain this to my mind, but refutes it. In the case of Blount (the first in the United States) it was held that Blount could not be impeached because he did not hold office under the United States when the offense was committed. And the practice of the country with universal acquiescence further limits the rule to civil office. There are very cogent reasons why this should be so. Now, if this limitation cannot be found in the common law it must be sought in the Constitution, and it can only be found there in the fourth section of the second article. Now, whether we construe this section as a limitation upon a jurisdiction already vested or as the creation of jurisdiction, it clearly means that only persons in office can be impeached. That is, if we are driven to this section to find a limitation which is conceded to exist, we are compelled to find the whole limitation contended for.

But this section is not only a limitation; it is also an extension of jurisdiction. As first suggested by the Senator from New York and brought sharply out by the Senator from Minnesota, the President, as the executive head of the Government, was not impeachable by any analogy of the common law. His position does not correspond to that of the king who was not impeachable or to the prime minister who was. Story very ably argues, and refers to this very section of the Constitution in confirmation, that the President is not an officer of the United States. As was tersely said by the Senator from Massachusetts, [Mr. BOUTWELL,] "He is a part of the Government." He was made impeachable by this section, and the President is so closely linked with civil officers that they cannot be separated for purposes of jurisdiction. In this view the rule that including a class excludes others becomes operative.

It is true, as suggested by the Senator from Missouri, [Mr. BOGY,] that section 3 of the first article of the Constitution provides that "when the President of the United States is tried" (on impeachment) "the Chief Justice shall preside," thus raising an implication that the President was impeachable; but the history of the debates in the convention shows that this provision was not agreed upon until after the adoption of the fourth section of the second article, and that its precedence in place was assigned by the "committee on style." In fact it was first reported by this committee, after all other provisions in regard to impeachment had been determined by the convention.

Where private rights are in issue, the general opinion of constitutional construction should have little weight, but where public rights and considerations are only involved, public opinion, that public opinion which can alone give the Constitution any vitality as a political instrument, becomes a great factor. I take it then to be accepted American law here and elsewhere, to which there is general acquiescence, though there may be individual exceptions of opinion, that only offenses are impeachable which are committed in civil office, and that these offenses are those enumerated in the fourth section of the second article. This is the law; so generally accepted that it is the one firm and stable thing amid the shifting sands and changing winds of opinion and debate. We have one point fixed. Fixed not, I admit, by the clear intention of the men who wrote the words of the constitutional clauses, but by that far greater intelligence and more infallible rule, a hundred years of experience; by the inertia of acquiescence.

Is it possible to deduce, can you deduce that fixed rule from the vague, shadowy, undefined, and undefinable custom of Parliament which is only a custom in that it is above law—conforms to whatever it desires and borrows or repudiates the example of yesterday in order to sanction the right or establish the wrong of to-day at the whim or caprice of its omnipotent but changing will?

Who here, elsewhere, or anywhere can tell how much of what is called the common law of impeachment is derived from precedents in impeachment trials and how much from the theory of the omnipotence of Parliament?

Sir, for one I will not believe that this undefined law ever became by adoption a portion of American jurisprudence; that this vast power was properly vested by implication in Congress. Any intention to place it there must yield to the spirit of the whole instrument. If grafted there, it did not grow. If planted there, it did not take root.

With the Senator from Wisconsin, [Mr. CAMERON,] I can find in the Constitution enough to create the proceeding of impeachment, without receiving anything from inheritance or taking anything by implication. I find there a class of persons, an enumeration of offenses which are impeachable; only one penalty which is enjoined by affirmative words, one limit which cannot be transcended.

I know that as a matter of verbal criticism or legal construction of language neither theory is perfect, but in the one I stand within secure limits of actual grant, in the other in the vague and shadowy unknown. In the one I stand within the rule of interpretation which has been found to be safest and wisest for the whole instrument, in the other I make this procedure an excrescence upon the body-politic.

If the time should ever come when the power to impeach after office is necessary to secure the proper administration of office, society will be so corrupt and the motives of public morality so low that the Republic cannot be saved with it, and would not be worth saving if it could.

Opinion of Mr. Key,

Delivered May 29, 1876.

Mr. KEY. The provisions of the Constitution material to our consideration on this question are these:

First—

> The House of Representatives * * * shall have the sole power of impeachment.

Second—

The Senate shall have the sole power to try all impeachments.

Third—

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Fourth—

The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

These are given here in the order in which they stand in the Constitution, and it seems to me that when they are thus collated they are so plain and explicit as to leave little room for construction or doubtful interpretation.

The first gives the House of Representatives the sole power to impeach. I confess that I do not comprehend that rule of strict construction which does not find a power where it is expressly granted, and discovers it, by implication, in a clause in which no such power is given. Strict construction of an instrument finds the power in the language in which it is given. There is as much of latitudinous construction in refusing to find a power in the words by which it is given, as by forcing an implication of the power from language which does not authorize it. A strict construction eliminates and ascertains the powers delegated from the language as expressed, and will assert a power which plainly exists as strongly as it will deny one raised only by forced implication. It appears to me, therefore, strange that although the Constitution says that "the House of Representatives *shall have* the sole power of impeachment," yet these words do not give it the "sole power of impeachment," and that you must go somewhere to find that power where nothing is said about it, and that a strict construction of the Constitution requires this.

The first provision grants to the House of Representatives the sole power to impeach. The second gives the Senate the sole power to try the impeachment. The third declares that, should the Senate convict the person impeached, the judgment shall extend no further than to removal from office and disqualification to hold office under the United States. The fourth provision says that if the President, Vice-President, or any other civil officer of the United States shall be convicted on impeachment for treason, bribery, or other high crimes and misdemeanors, he *shall be removed* from office. The Constitution does not say that the President, Vice-President, and other civil officers of the United States only shall be impeached. It bears no such construction, in my opinion, unless it be forced by the widest implication. It does not say that only treason, bribery, and high crimes and misdemeanors shall be impeachable offenses. We can all see how a case might happen which would demand the removal of a public officer who had been guilty of no such offense. Suppose a President, by injury, disease, or other cause, should become imbecile to such an extent as to make him incompetent to discharge the duties of his high office—suppose he should insist on the exercise of the functions of the office to which he had been chosen, believing himself fully qualified to discharge them, how should we get rid of him? He cannot be said to be guilty of treason, of bribery, or of high crimes or misdemeanors, for these are all criminal offenses, and an evil intent is a necessary ingredient of the charge, and there is with him no such intent. It is true the Constitution provides that in case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the office, these duties shall devolve upon another; but how are you to ascertain and determine his mental inability when he denies it from honest belief, and asserts with equal confidence his ability to discharge its duties, if not by impeachment?

The Constitution does not undertake to define the nature and form of impeachment, or its scope and boundaries. It treats of the whole subject as of a matter which is already defined, bounded, and understood. I think the House of Representatives may impeach for other offenses, abuses, failures, and wrongs than those included in the terms "treason, bribery, and other high crimes and misdemeanors." I think it may impeach other parties than the "President, Vice-President, and other civil officers of the United States." Upon no other hypothesis, it seems to me, can we reconcile and harmonize the provisions of the first and second articles of the Constitution defining the extent of punishment or penalty. The first says that judgment shall extend no further than to removal from office and disqualification to hold office. That provision is general, and, everything else out of the way, allows the Senate to remove and disqualify partially or entirely, or to remove or to disqualify, in its discretion; but as this might not be sufficient in some cases, the second article says that if the President, Vice-President, or other civil officer of the United States shall be convicted on impeachment, he *shall be removed*. To that extent the Senate shall have no discretion, but it may still disqualify or not. If others are impeached, the Senate may or may not remove; but if the President, Vice-President, or other civil officer is successfully impeached for treason, bribery, or other high crimes and misdemeanors, the Senate shall remove. If the second article defines who shall be impeached and the offenses for which they may be impeached, removal from office is the imperative penalty, and the provision in the first unmeaning. It would follow also that the party could only be impeached for treason, bribery, and other high crimes and misdemeanors.

We must interpret the law strictly and as it is written. We are not to make the law. We are not to determine whether the Constitution contains such provisions as we should have made or not, or whether they might be improved. We must not obscure it, or render it inefficient and powerless by latitudinous construction or forced implications. The language of the Constitution in regard to impeachment, when considered in the order in which it stands, the order in which it was placed by its makers—its regular and natural order, so to speak—appears to me easy of interpretation, and so clear and explicit in its terms as to need the application of none of the rules of construction used for ambiguous or doubtful provisions. To my mind, it appears that the difficulties of the question under consideration arise, not out of the Constitution, but from the latitude of opinion which has been taken heretofore in regard to the implications of the language used, and which do not properly belong to it, when that language is defined in its natural order, according to its plain and simple meaning.

In giving expression to the opinion I have upon this question, I wish to be understood as doing so with becoming modesty and diffidence, for I confess that the magnitude of the difficulties in regard to it which arise and which have arisen heretofore in the minds of the most able and distinguished members of this body on this trial, as well as on those like trials which have preceded it, make me doubtful of the justice and propriety of the views which seem to me so clear and inevitable. I have great respect for the opinion of those Senators who have differed with my view of this question, and to differ with them gives me some apprehension as to the correctness of my conclusion; but, notwithstanding the ability, force, and earnestness with which their views have been urged, my mind is convinced in favor of the jurisdiction of the Senate in this case. Nor am I alarmed at the dangers which some Senators see in coming to such a conclusion. Our fathers had confidence in the people. They gave the people the right to choose those who should be the members of the House of Representatives. They did this because they were satisfied the people would elect good and qualified men, to whom the high trusts of that exalted position might be safely delivered. They gave the Legislatures of the States the right and duty to elect those who should compose the Senate of the United States, because they believed these legislatures would choose such as were qualified by experience, ability, learning, and integrity for their high station. To these bodies, the Senate and House of Representatives, it gave the legislative power of the Government. To the body chosen by the people our fathers believed they might safely give the power and discretion of impeachment. They said this body shall have the power to impeach. They did not say it *should* exercise this power, but it might do so.

Our fathers never supposed that that august body of the people's picked men would deal with any but great offenders, guilty of great offenses in public station, or with great officers disqualified by some unusual cause for the discharge of official duties. They had more confidence in Congress and in our form of government than have many who have spoken in this debate. They never feared that the "awful discretion" of the Senate would be invoked or exercised against small offenders or small offenses, or from motives of hate and party passion. They would never have given to Congress its grand trusts and great powers had they believed it would ever be capable of the infamous conduct and action which in this Chamber have been pictured in horrible outlines before our eyes to terrify us. The fathers were not afraid to trust Congress. They did not presume that the representatives of the people and the States were those who would be the first to pull down the glorious fabric which sustains and protects our liberties. The first century of our existence as a nation has taught many here, it seems, that Congress is to be feared, not trusted. Has Congress grown alarmed at its own temper, powers, and tendencies? Do its members believe that the lives and liberties of the people are in the power and control of custodians so dangerous? Has Congress grown so corrupt, so unfaithful, so weak that it may be driven from its line of duty by passion or party rancor? Has a new light shone out discovering to our startled vision rocks and breakers which never before appeared in our sea, upon which our vessel of state is in imminent peril of being wrecked? I repeat, are Senators afraid of the people's chosen representatives? Are Senators afraid to trust themselves? Do they think that we are better than those who are to come after us? If corruption, party hate, or other evil spirit should so possess and control Congress that the House of Representatives should impeach and two-thirds of the Senate vote to convict a political antagonist, to destroy him on that account and for that reason, our Government will have reached such a state of decline, decay, and rottenness that if destruction shall not come in one shape it will come in another.

More than one Senator—as an argument *ad hominem*, I suppose—has told us that under the construction which would give this body jurisdiction of this case those of us who were lately in rebellion could be impeached for treason. Sir, on becoming members of this body we took a most solemn oath. If we believe that a just interpretation of the Constitution gives this jurisdiction, and were deterred from saying so and voting so because the construction was unfavorable to us, we should forfeit all claim to honor and manhood, bring disgrace upon ourselves and the people we have the honor to represent, and deserve the execration of mankind everywhere.

But we are told that impeachment in England was in former ages

a most barbarous, bloody, and tyrannous proceeding. It is true that in the times past many bloody sacrifices were made in that country under the forms of impeachment; but where one man so fell hundreds under the sentences of other tribunals fell at the stake, on the gibbet, and on the scaffold. Of all the courts of England in which crimes and criminals were tried the court of impeachment was stained with the least blood. It tried noblemen and great officers. The people fell by thousands under the other courts. We are told that a little later in our own country men were persecuted and punished because they were Quakers, and ugly old women were tried and condemned because they were said to be witches; but the descendants of those who did these things were among the very first to light the fires of liberty on this continent, and none did more than they in laying broad and deep the foundations of freedom's glorious temple and erecting thereon the magnificent structure which attracts the world's admiring gaze. These excesses were not the fault of the people. The age was to blame. The people of England are more enlightened, free, and tolerant now than they were in the days of Henry VIII and Mary and Elizabeth, and the people of New England are more liberal and tolerant than in the days of Roger Williams and Miles Standish.

England, with what gentlemen call an omnipotent Parliament, has had but one or two cases of impeachment, I believe, during the existence of our Constitution. Their last was in 1805, I think. Since that period we have had many cases of impeachment. We have this fact, which should quiet the grave apprehensions of Senators in regard to the dangers of the common-law doctrine of impeachment: England, in our age, with what these gentlemen denounce as unlimited power of impeachment, has had no case of impeachment while we, with scarcely any power to impeach, according to their idea, have had several trials of the kind; so that, using our own age and England and the United States for the test of the doctrine, the result appears to be that there is more danger of impeachment under our Constitution than under that of England. What we should have done had our Constitution and people been co-existent with the reigns in England, during which blood flowed so freely, we cannot tell.

I think, Mr. President, our fathers intended to lodge, and did lodge, in the Houses of Congress, in such manner that these bodies should be a check upon each other, a high discretionary power, broad enough and wide enough to be used and exercised for the safety of the state and the security of the liberties of the people in great and unforeseen emergencies, dangerous to the life of the state; a great discretion, to be exercised when something arose and had to be grappled with at once to save the country, which the general law had failed to foresee, define, and provide against. The Constitution was made not only for the age in which it was framed, but for all the ages which are to come. It was impossible to foresee what complications, combinations, or unthought-of dangers might imperil the nation; hence the fathers gave the power of impeachment to the Houses of Congress, the same bodies who give laws to the Government, to be used if need be in unforeseen emergencies, as well as in the cases specifically mentioned in the Constitution. It is a power given for the security of liberty; a power, like all others granted by that instrument, to be used wisely, and not abused; a power, active, efficient, and operative when occasion demands its exercise, and only then.

Mr. President, I will conclude by saying that for the life of me I cannot understand or greatly respect a theory which would impeach and try President Johnson, who had been guilty of no crime, because he was in office, and permit one to escape who is presumed to be guilty, as the record stands, of a great offense against the people of the nation in defrauding its soldiery, whom it was his duty to care for and protect, because he resigned his office to avoid impeachment and trial. I have heard of the uncertainty of the law, and such might be an example of it.

The power of impeachment, Mr. President, is one of the bulwarks of our liberties by which the representatives of the people may insure them against those great offenders whose official misconduct is intended to destroy our Government or overthrow the rights of its citizens, and not as an engine of oppression, by which a faithful officer could be destroyed and the greatest official offender of the age escape; and yet that is what the theory of those who deny jurisdiction in this case might accomplish.

Opinion of Mr. Dawes,

Delivered May 29, 1876.

Mr. DAWES. Mr. President, the Senate has determined that the discussion of this question shall close with the day. The signal ability and exhaustive character of the debate which has preceded, and the rights of those who are waiting to follow me, both admonish me to be brief. I shall struggle to heed the admonition.

I am of opinion that the Senate has jurisdiction to try William W. Belknap upon the articles of impeachment presented against him by the House, anything in his plea to the contrary notwithstanding. I have thought all along that I should sufficiently discharge my duty by simply thus recording my vote, and that perhaps that vote would vindicate itself quite as well without any attempt upon my part to support it with arguments as in any other way.

I have listened to the opinions delivered on the one side and on the other, and I believe I have listened to them all, as well those from which I have differed as those with which I have agreed. Senators around me, at whose feet I delight to sit, have addressed to me in common with others very able arguments against this jurisdiction. Among them has been my own colleague, [Mr. BOUTWELL,] whose opinions cannot have as great weight with any other Senator as with myself. I have come to feel in the progress of these arguments that it was due to them that I should give them some reason why I find it impossible to yield to their reasoning. For this purpose alone I speak.

The plea is one of confession and avoidance. For the purpose of the argument, it must be treated as confessing all that is alleged; that is, that Mr. Belknap, while Secretary of War and in and about his official duty, has committed high crimes and misdemeanors, but that by a subsequent act of his own, a simple resignation of office, he has avoided all the consequences that would otherwise under the Constitution follow his official crime. I confess, at the outset, that it would not be easy to convince me of the validity of such a plea. I cannot easily come to the conclusion to which the Senator from California [Mr. BOOTH] seems to have arrived in the beautiful and eloquent opinion delivered by him yesterday: that while the members of the convention, if asked their opinion, would of one accord have said that they had provided for this case, but that nevertheless, without intending it, they had by some unaccountable jumble of arrangement thwarted their own purpose. A few simple rules of construction have guided me to the conclusion that this plea is bad. I take the Constitution as a whole, and insist that effect must be given to all its provisions. Any rule of construction must be bad which brings its different provisions in irreconcilable conflict with each other or which renders any of them nugatory or void. Many Senators starting from different premises have been led in this discussion different ways and to opposite conclusions. With some the power of impeachment placed in the Constitution is the common-law impeachment as it existed when the Constitution was formed, limited, it is true, in its application and its penalty by express provisions found in the instrument itself. With others the impeachment spoken of in the organic law is a new creation of the Constitution itself, having no reference to the common-law understanding of that term, created, defined, and limited by article 2, section 4, in these words:

> The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

By them it is held that all other provisions relating to impeachment in the Constitution are but distributions of the several parts to be performed in carrying out the power granted by this section. The argument between the advocates of these two theories has proceeded upon the ground that they must necessarily lead to different conclusions. It has been generally held by those who believe that the impeachment here spoken of is the common-law power of impeachment, to which, wherever it obtains, it is admitted that all official misconduct is amenable, that it leads to the conclusion that the Senate has jurisdiction. Those holding the other theory, that this is a new power, claim, with equal confidence, that it leads to the opposite conclusion. Hence these two methods of reasoning have been arrayed against each other with great and exhaustive ability and research. But I have been unable to see that this distinction is essential to a correct conclusion. By either mode I arrive at the same result, and, therefore, to my mind, this question, which has so often been made preliminary in the argument, is wholly immaterial. By both processes of reasoning I am led to the same conclusion. Even if the framers of the Constitution, in putting into article 2, section 4, the words I have already quoted, namely, that "the President, Vice-President and other civil officers, shall be removed on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors," did create a new power, with its own limitations and its own consequences, to be neither measured nor defined by the history of impeachment in the past, still from these premises I can come to no other conclusion but that this power by every just and fair, as well as strict, construction of the words here used includes the case at bar.

And briefly, for these reasons: Mr. Belknap was a civil officer when the offense was committed. The offense, as alleged, is a high crime and misdemeanor, and the simple question to be decided is whether a civil officer who thus commits an offense described in the Constitution must be a "civil officer" when the offense is committed or when he is tried for it. Those who believe that the Senate has jurisdiction to try the case believe this language to mean that he must be a civil officer when the offense is committed, while those who believe that the Senate has not jurisdiction are of opinion that the language imports that he must be a civil officer when tried. The construction which requires the offense to be committed while in office, without regard to the position of the offender when tried, leads to the conclusion that the person who, while in office, commits high crimes and misdemeanors, may be impeached therefor at any time thereafter. On the other hand, the construction which requires that the person shall be a civil officer when impeached for high crimes and misdemeanors, whether in or out of office, leads to the conclusion that the person when in office may be impeached for any such offense committed whether in or out of office, and therefore during any period of his previous private life. While consequences are not always tests of

construction, yet no one can well lay aside entirely their consideration, and, therefore, it has been urged upon us with great force by those opposed to jurisdiction in this case that the construction which gives jurisdiction renders liable to impeachment for the remainder of his life any person who has held any civil office under the Government, overlooking in argument that the construction insisted upon instead exposes every person the moment he enters office to impeachment and consequent removal, and it may be perpetual disqualification, for any alleged offense he may have committed at any previous time in his life, thereby attaching to the offense itself, years it may be after its commission, a penalty not attached to it when it was committed, and it may be long after the infliction of every legal penalty for such offense. I cannot, while listening to the dreaded consequences portrayed by those who fear the results that may follow jurisdiction in this case, keep out of mind equally serious consequences which hang upon their own conclusion that it is enough to give jurisdiction that the person be in office when impeached, and has, when in or out of office, committed any of the offenses defined in the Constitution. The construction which I have put upon this section of the Constitution, namely, that a "civil officer" is the description of the person committing the offense, and not of the one impeached, is in strict accordance with the construction placed upon penal statutes of a like character. The very statute under which Mr. Belknap is understood to be now under indictment for this offense is in these words:

Every officer of the United States and every person acting for or on behalf of the United States in any official capacity under or by virtue of the authority of any Department or office of the Government thereof; and every officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, who asks, accepts, or receives any money, or any contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may at any time be pending or which may be by law brought before him in his official capacity or in his place of trust or profit influenced thereby, * * * shall be punished by a fine not more than three times the amount asked, accepted, or received, and by imprisonment not more than three years.

Every member, officer, or person convicted under the provisions of the two preceding sections who holds any place of profit or trust, shall forfeit his office or place and shall thereafter be forever disqualified from holding any office of honor, trust, or profit under the United States. (Revised Statutes, sections 5560, 5501, and 5502.)

There are other sections of similar import. The following are sufficient to illustrate the argument:

Every officer or other person charged by any act of Congress with the safe-keeping of the public moneys, who fails to safely keep the same, without loaning, using, converting to his own use, depositing in banks, or exchanging for other funds than as specially allowed by law, shall be guilty of embezzlement of the money so loaned, used, converted, deposited, or exchanged, and shall be imprisoned not less than six months nor more than ten years, and fined in an amount equal to the amount so embezzled.

Every officer or agent of the United States who, having received public money which he is not authorized to retain as salary, pay, or emolument, fails to render his accounts for the same as provided by law shall be deemed guilty of embezzlement and shall be fined in a sum equal to the amount of the money embezzled and shall be imprisoned not less than six months and not more than ten years. (Revised Statutes, sections 5490 and 5491.)

In each of these sections it is the "officer" committing the offense on whom the penalty is to be visited, and the uniform judicial construction of such penal statutes is that the person indicted under them must have been such an officer when the offense was committed, without regard to his position in that respect when indicted. No one would be bold enough, I think, to plead to an indictment under either of these sections that he had resigned his office since committing the offense, and had thereby avoided the penalty. It is admitted in this argument that the construction here contended for is applicable to a penal statute. So I understand the Senator from Michigan [Mr. CHRISTIANCY] and the Senator from New York [Mr. CONKLING] to admit, while claiming that no such construction can be applied to the section of the Constitution in question. I know of no rule of construction more strict than that applied to penal statutes, nor can I see any reason that in construing this section of the Constitution a rule different from that applied to the statute should be invoked. If the Senate has no jurisdiction to try Mr. Belknap upon the articles of impeachment because he has left office since the offense was committed I cannot see by what rule of construction the courts can try him upon an indictment under the statutes in question, and he must, therefore, if guilty, escape altogether by a device of his own. But it is argued, inasmuch as in the article of the Constitution under consideration the penalty is removal from office, that this, in aid of construction, shows that no man out of office can be impeached, because no man out of office can be removed from office. But this reasoning ignores altogether a more general provision of the Contitution which precedes the one under consideration, namely, the last clause of section 3, article 1, which is in these words:

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

The construction contended for renders it absolutely impossible to impose disqualification for holding office in future upon any one under any circumstances against his consent. There can be no greater mistake than that removal from office is the sole object of impeachment under the Constitution. Yet it is the vice of all the arguments against jurisdiction. The framers of the Constitution were, on the contrary, of the opinion that there might exist cases of malfeasance in office of so heinous a character that simple removal from office would not be an adequate penalty or a sufficient protection of the public. They therefore added to the power of removal from office a further power of disqualification to enjoy any office of honor, trust, or profit under the United States.

I will not discuss at this moment the comparative severity of the two penalties. It is enough for the argument to say that the framers of the Constitution deemed this latter a penalty of importance enough to insert in that instrument. Therefore, in my judgment, any construction of the instrument itself which renders that penalty of no value cannot be the true one. The provision of the Constitution last cited is peculiar in form. "Shall not extend further than" are the words. If they had stood alone in the Constitution, I think the conclusion would have been inevitable that the judgment might be of any character whatever touching the tenure of office or disqualification to hold office; that is, might be removal, suspension for a term, disqualification to hold any office or any particular office, or for a limited time. Under a similar provision in the Massachusetts constitution, which has no such restricting clause as in article 2, section 4, a justice of the peace was on impeachment suspended from office one year. (Appendix to Prescott's Trial, page 216.) But taking this provision in connection with the first section cited, namely, that which requires certain officers to be removed on conviction, which is subsequent in point of fact in the Constitution, the Constitution has evidently provided that at least in respect to the officers named in section 4 of article 2 there shall be no stopping short of removal from office. There is, therefore, no alternative in the cases mentioned in this section; but the general section (limiting, as I have said, the punishment in all cases of impeachment with the qualification here stated) still remains in force, and the last clause of it authorizes disqualification to hold office as much as the penalty of removal. This, as I have already stated, can only be imposed upon the offender by his own consent, if he can avoid impeachment by resignation of office. I cannot see that it violates any rule of construction to hold that this particular penalty can be inflicted upon the offender though removal from office becomes inoperative.

But it is further argued that the two penalties are in this section coupled together by a copulative conjunction, and that, therefore, the one cannot be imposed without the other. But this mistakes the purpose of the section itself. It is not the form, but the measure of judgment. "Judgments in cases of impeachment shall not extend further than to removal from office, and disqualification to hold," &c. But, as before said, they may extend along that line to any point within its limits. Besides, if the two penalties are so coupled together by the copulative conjunction that disqualification to hold office cannot be imposed without also imposing removal from office, then removal from office cannot be imposed without disqualification to hold office; and yet the universal construction of the Constitution has been that the penalty of disqualification is a discretionary one, to be imposed with removal or not at the discretion of the Senate. It was imposed in the case of Humphrey, it was not imposed in the case of Pickering; the only two cases of conviction thus far had.

But it is also argued that the enumeration, in section 4 of article 2, of the President, Vice-President, and all civil officers of the United States as the persons who shall be removed from office on impeachment, &c., excludes all other persons, under the rule, *expressio unius, exclusio alterius*. But the application of this well-known rule brings no aid to the construction, for it begs the very question at issue. The words "civil officer" here enumerated mean a civil officer when the offense was committed or when the offender is tried. For all that there is in this rule it may mean the one or the other. And the rule itself contributes nothing toward a conclusion. But the rule is not a safe one to apply to this case, for the section also enumerates certain officers who shall be *removed* from office on impeachment, &c. Now the Constitution provides no other mode of removing officers. The application of this rule would exclude every other method, and no one could be removed from office by any other process than impeachment; a conclusion in the face of all construction and all history, and a conclusion which renders the very statute under which Mr. Belknap is indicted unconstitutional, for that proposes removal from office by a court after conviction on indictment.

If, therefore, I do not err, a just and fair construction of the words of the fourth section of the second article, the judicial construction of penal statutes enacted in similar language to meet the same case, and the necessity of giving force and effect to all the general provisions of the Constitution defining and limiting the judgment in impeachment cases, as well as the discretionary power exercised by this Senate in imposing one branch of the penalty without the other, heretofore exercised, all lead to the conclusion that the clause in question clothes the Senate with jurisdiction in this case. The offense was an impeachable one when committed. No subsequent act of the offender can change its character or its consequences. A resignation of office for the avowed purpose, as this record confesses, of escaping these consequences is most certainly such an act and as certainly must fail of its purpose. It is gravely argued here that men do by their own act escape the jurisdiction appointed to try them for offenses when they depart out of that jurisdiction, and this act of Belknap has been likened in argument here to an escape by him from the reach of the district court so that he cannot be tried in it. But when he comes into the district court and successfully pleads in bar that he has run

away from its jurisdiction, it will be quite time to see whether there be any analogy or soundness in the argument thus adduced.

I have proceeded thus far in the argument upon the theory advanced by some that the power of impeachment in the Constitution is a new creation, the power found in the fourth section of the second article, and that all other provisions of the Constitution in reference to it are merely functionary or distributory of the parts in the proceeding. I cannot, however, bring myself to the conclusion that the framers of our Constitution, when making it, undertook the creation of a new power differing essentially from any other that had existed up to that time, so potent in its character and upon which evidently there was such great reliance for the protection of the liberties of the people and their institutions against unauthorized exercise of power and corruption in official life. If that had been the case, I cannot conceive the possibility of their placing that power, if a new one, in the Constitution without one single word of debate. All the debate that has come down to us touching impeachment arose after the power itself had been lodged in the Constitution, and had reference solely to limitation and details. There did exist, all admit, at the time the convention met, a well-known and well-defined power of impeachment at common law which would reach all official misconduct in or out of office. It has been described here by more than one Senator, and its early history portrayed in very dark colors. The enormities that in past ages had been committed in its name, the horrors and cruelties that had darkened the early pages of its history have all been told by the Senator from Illinois, [Mr. LOGAN.] How it originated and its subsequent history have been carefully and accurately delineated by the Senator from Wisconsin, [Mr HOWE.] The Senator from Iowa, [Mr. ALLISON,] tells us what no one could deny, that it existed in all the colonies under their charters. It did so exist, Mr. President, not because of any express grant by the king in the charter, but in the belief of the public men of that time that it came as an inherent power with the right of the colonists to govern themselves. At the time of the Revolution and when the Constitution itself was framed it not only existed, it not only had a place among the recognized powers under their charters, but was believed by them to be a power most efficient and promotive of the public good. I fail to find any sentiment prevalent among the colonists that the power of impeachment at common law, as they believed they had secured it under their charters, was a dangerous power. I know that in its early history crimes have been committed in its name. I know, too, that crimes have been committed in the name of trial by jury. There is no blacker page in the history of impeachment than that which records the enormities committed in the court of king's bench by Scroggs and Jeffreys through the instrumentality of trial by jury. Crimes have been committed in the very name of liberty herself. The writs of *habeas corpus* and *de homine replegiando* came over with impeachment as instruments in the hands of a free people for the assertion of their rights, for the maintenance of their liberties, and for their protection against the encroachments of power and the corruptions of officials. Hallam tells us how it was held in England at that day. Speaking of the impeachment of the Earl of Essex in the time of James I, he says:

> This impeachment was of the highest moment to the Commons, as it restored forever that salutary constitutional right which the single precedent of Lord Bacon might have been insufficient to establish as against the ministers of the Crown. (Hallam's Constitutional History, volume 1, page 401.)

And again—

> The Commons had been engaged for more than twenty years in a struggle to fortify their own and their fellow-subjects' liberties. They had obtained in this period but one legislative measure of importance, the late declaratory act against monopolies; but they had rescued from disuse their ancient right of impeachment, and of these advantages some were evidently incomplete, and it would require the most vigorous exertions of future Parliaments to realize them. But such exertions the increased energy of the nation gave abundant cause to anticipate. A deep and lasting love of freedom had taken hold of every class, except perhaps the clergy.

No better evidence of the real character of impeachment as known at the common law as well as the estimate in which it was held by the colonists at the time the Constitution was framed can be given than is found in Mr. John Adams's history of its assertion in the colony of Massachusetts against the power of the Crown itself only two years before the Declaration of Independence. The judges in that colony were the instruments selected by the Crown to carry out its system of oppression and injustice. They were made independent of the colony by a provision for the payment of their salaries out of the British exchequer. It was in this unequal struggle between the people and these judges that the power of impeachment was invoked. I cannot do better in this attempt to show both where the power was deemed to be lodged and the reasons for holding that same power to be one of the greatest efficacy and security to a free people which must have obtained with the framers of the Constitution when they made that instrument than by quoting somewhat at length from a letter from Mr. Adams, written in 1817, many years after the events described, and addressed to a learned jurist of Massachusetts, giving an account of this remarkable impeachment. Writing to Mr. William Tudor, January 10, 1817, Mr. John Adams says:

> The public had been long alarmed with rumors and predictions that the king, that is the ministry, would take into their own hands the payment of the salaries of the judges of the supreme court. The people would not believe it; the most thinking men dreaded it. They said: "With an executive authority in a governor possessed of an absolute negative on all the acts of the legislature, and with judges dependent only on the Crown for salaries as well as their commissions, what protection have we? We may as well abolish all limitations, and resign our lives and liberties at once to the will of a prime minister at St. James." * * * The dispatches at length arrived, and expectation was raised to its highest pitch of exultation and triumph on one side, and of grief, terror, degradation, and despondency on the other. The legislature assembled, and the governor communicated to the two houses his majesty's commands.
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> It happened that I was invited to dine that day with Samuel Winthrop, an excellent character and a predecessor in the respectable office you now hold in the supreme court. Arrived at his house in New Boston, I found it full of counselors and representatives and clergy. * * * All expressed their detestation and horror of the insidious ministerial plot, but all agreed that it was irremediable. There was no means or mode of opposing or resisting it.
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> Indignation and despair, too, boiled in my breast as ardently as in any of them, though as the company were so much superior to me in age and station I had not said anything; but Dr. Winthrop, the professor then of the council, observing my silence and perhaps my countenance, said, "Mr. Adams, what is your opinion? Can you think of any way of escaping this snare?" My answer was, "No, sir; I am as much at a loss as any of the company. I agree with all the gentlemen, that petitions and remonstrances to King or Parliament will be ineffectual. Nothing but force will succeed, but I would try one project before I had recourse to the last reason and fitness of things." The company cried out almost or quite together, "What project is that? What would you do?" Answer, "I would impeach the judges." "Impeach the judges! How? Where? Who can impeach them? Answer, "The house of representatives." "The house of representatives! Before whom? Before the House of Lords in England?" Answer, "No, surely, you might as well impeach them before Lord North alone." "Where, then?" Answer, "Before the governor and council." "Is there any precedent for that?" Answer, "If there is not, it is now high time that a precedent should be set." "The governor and council will not receive the impeachment." Answer, "I know that very well, but the record of it will stand upon the journals, be published in pamphlets and newspapers, and perhaps make the judges repent of their salaries and decline them; perhaps make it too troublesome to hold them." "What right had we to impeach anybody?" Answer, "Our house of representatives have the same right to impeach as the House of Commons has in England, and our governor and council have the same right and duty to receive and bear impeachment as the king and House of Lords have in Parliament. If the governor and council would not do their duty, that would not be the fault of the people; their representatives ought nevertheless to do theirs." Some of the company said that the idea was so new to them that they wished I would show them some reasons for my opinion that we had the right. I repeated to them the clause of the charter which I relied on, the constant practice in England, and the necessity of such a power and practice in every free government.
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> The company dispersed and I went home. Dr. Cooper and others were excellent hands to spread a rumor, and before nine o'clock half of the town and most of the members of the general court had in their heads the idea of an impeachment. The next morning early Major Hawley, of Northampton, came to my house under great concern and said he heard that I yesterday, in a public company, suggested a thought of impeaching the judges; that report had got about and had excited some uneasiness, and he desired to know my meaning. I invited him to my house, opened the charter, and requested him to read the paragraphs that I had marked. I then produced to him that volume of Selden's works which contains his treatise on judicature and Parliament. Other authorities in law were produced to him, and the state trials and a profusion of impeachments with which that work abounds. Major Hawley, who was one of the best men in the province, and one of the ablest lawyers and best speakers in the legislature, was struck with surprise. He said: "I know not what to think. This is, in a manner, all new to me. I must think of it." * * *
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> Major Hawley, always conscientious, always deliberate, always cautious, had not slept soundly. What were his dreams about impeachment, I know not. But this I know, he drove away to Cambridge to consult Judge Trowbridge and appealed to his conscience. The charter was called for; Selden and the state trials were quoted. Trowbridge said to him what I had said before, that the power of impeachment was essential to a free government; that the charter had given it to our house of representatives as clearly as the constitution in the common law or immemorial usage had given it to the House of Commons in England. This was all he could say, although he lamented the occasion of it.
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> Major Hawley returned full in the faith; an impeachment was voted; a committee was appointed to prepare articles. * * *
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> The articles were reported to the house, discussed, accepted, the impeachment voted and sent up in form to the governor and council, rejected, of course, as everybody knew beforehand that it would be; but it remained on the journals of the house, was printed in the newspapers, and went abroad into the world. And what were the consequences? Chief Justice Oliver and his superior court, your supreme judicial court, commenced their regular circuit. The chief justice opened his court as usual. Grand jurors and petit jurors refused to take their oaths. They never could, as I believe, prevail on one juror to take the oath. I attended at the bar in two counties, and I heard grand jurors and petit jurors say to Chief Justice Oliver to his face, "The chief justice of this court stands impeached by the representatives of the people of high crimes and misdemeanors and of a conspiracy against the charter privileges of the people; I cannot serve as a juror or take the oath." The cool, calm, sedate intrepidity with which these honest freeholders went through this fiery trial filled my eyes and my heart.
>
> In one word, the royal government was from that moment laid prostrate in the dust, and has never since revived in substance, though a dark shadow of the hobgoblin haunts me at times to this day.—*John Adams*, volume 10, page 236.

I have read these long extracts from Mr. Adams for the purpose of showing the spirit of those times and the difference between the colonists and Senators here in the estimate put by them respectively upon the power of impeachment up to the very hour of the Revolution. I have cited it for another purpose. Mr. Adams, who wrote this glowing account of impeachment at common law, embodied in the constitution of Massachusetts, which was the production of his pen, in 1780 the very peculiar phraseology put seven years later in the Constitution of the United States limiting the judgment in all cases of impeachment. "Judgment in all cases of impeachment shall extend no farther than removal from office and disqualification to hold and enjoy any office of honor, trust, or profit," is a peculiar phrase. It is first found in the constitution of New York, adopted in 1777, in that of Massachusetts drawn by Mr. Adams in 1780, in that of New Hampshire, which was nearly a copy of that of Massachusetts in 1784, and then in the Constitution of the United States framed in 1787. There is no doubt that in these instruments it had a common origin, but whether it originated with Mr. Adams or with the framers of the New York constitution is uncertain. But Massachusetts from 1774, when the impeachment of the judges took place upon his instance, until 1780, was endeavoring to frame and adopt a constitution. Mr. Adams was appointed upon a committee to draft one in 1779. He tells us in another letter in respect to one of the most impor-

tant provisions of the Massachusetts constitution that it was largely the result of conferences he had with others on his journeys from Massachusetts to Philadelphia in 1774, 1775, 1776, and 1777. I think it is fair to assume that this peculiar phraseology by which judgment in all cases of impeachment was thus limited was the result of conferences between the leading minds of Massachusetts and New York, and perhaps New Hampshire, in whose constitutions it was placed before it was adopted by the framers of the Constitution of the United States. These men, as I have shown, were men most ardently impressed with the efficacy and importance of the power of impeachment at common law, which they believed came over with their charters and which they had proved was powerful enough to wrest their liberties from the hands of their oppressors.

In the trial of Prescott under the Massachusetts constitution in 1821 both Mr. Webster and the late Chief Justice Shaw, though on opposite sides in the trial, traced impeachment under that constitution to the common law. (Prescott's Trial, pages 160, 180.)

Now, with these views prevalent among leading minds, the convention, without debate, so far as I am able to ascertain, first declared that—

> The House of Representatives shall have the sole power of impeachment. * * * The Senate shall have the sole power to try all impeachments.

They then proceeded to put limitations upon that power:

> No person shall be convicted without the concurrence of two-thirds of the members present. * * * When the President is tried, the Chief Justice shall preside. Judgment in all cases of impeachment shall not extend further than to removal from office and disqualification, &c. * * * But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law. * * * The President shall have power to grant reprieves and pardons for all offenses against the United States, except in cases of impeachment.

Nearly all the debate in the convention upon the subject of impeachment which has come down to us arose over another section, namely, the fourth section of the second article, which is in these words:

> The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Now, up to this point the power of impeachment in the Constitution seems complete, and yet there is no definition of that power, no rules of procedure prescribed, but the whole is left, like the definition and application of the term trial by jury in the Constitution, to be derived from other sources. Of course the framers of the Constitution used words understandingly. What did they mean when they said "the House of Representatives shall have the sole power of impeachment?" I cannot resist the conclusion that they meant by the term "impeachment" the known and defined power existing before the creation of the Constitution, so clear in character and in definition that it was not deemed necessary by them to use words other than the term itself to make it perfectly understood. Mr. Rawle says:

> Impeachments are thus introduced as a well-known defined term, and we must have recourse to the common law of England for a definition of them.—*Rawle on the Constitution*, page 198.

I have said that whatever debate arose upon the subject of impeachment arose upon the subsequent article in reference to the impeachment of the President, Vice-President, and civil officers of the United States so frequently cited. And it is worthy of remark that this debate was in reference to the office of President alone, the other words, "Vice-President and all civil officers of the United States," having been inserted afterward by the committee on style, and without debate. Now, the very debate over the office of President convinces me that the framers of the Constitution had in their minds all along the common-law power of impeachment. Otherwise this very debate would not have arisen, for a new creation applicable to all national officers, as was the phraseology in Mr. Randolph's original draught, would have given rise to no debate about the President any more than any other national officer. But by the common law the king could not be impeached, for there was no power above the king before whom he could be arraigned. In theory he was himself the source of power, and if the common-law impeachment was placed in the Constitution the query would most naturally arise, whether it would apply to the Chief Magistrate of this country or he would be excluded as in England, from which the power itself was derived. It seems natural to believe that lest some such question as that might hereafter arise it was well to remove all doubt and expressly provide for the liability of the Chief Executive to this salutary restraint over his official action as well as all other officers. Hence arose debate over attempting to provide for the impeachment of the President of the United States, and the very debate, meager as it is, tends wholly in my mind to strengthen the conviction that men out of office as well as in office can be impeached for such official misconduct as amounts to any one of the crimes specified in the Constitution. While this debate was going on Mr. Pinckney observed that "he ought not to be impeached *while in office*."

Mr. ALLISON. Does not the Senator know that Mr. Pinckney was opposed to the impeachment of the President altogether?

Mr. DAWES. Most certainly I do, but the convention was against him and declared that the President should be impeached. Then Mr. Pinckney struggled to provide that he should not be impeached while in office, which shows clearly that in his opinion the provision debated was broad enough to impeach him while out of office. The reply of Mr. Davié to Mr. Pinckney is most clear. Mr. Davié said:

> If he be not impeachable while in office, he will spare no effort or pains whatever to get himself re-elected.

Now upon the construction that the Senator from Iowa claims that he could only be impeached while in office, what meaning is there to this remark of Mr. Davié. One would suppose that the best thing the President could do would be to get out of office instead of sparing no effort or pains whatever to get himself re-elected, because, by the theory of the Senator from Iowa and others who agree with him, getting himself re-elected would be getting himself into the very jaws of impeachment, while getting himself out of office as soon as possible was getting himself beyond its reach. Mr. Wilson stated that he "agreed in the necessity of making the Executive impeachable while in office," and Colonel Mason said "that while great crimes are committed I am in favor of punishing the principals as well as the coadjutors."

I do not find anything in the debates running counter to the idea most manifestly conveyed by this meager account that all understood the phraseology adopted as applicable to the official after he has left office as well as before. Mr. Hamilton, in the forty-sixth number of the Federalist, commending this power to the favorable consideration of the public, conveys to my mind most clearly the same idea. I will not stop to quote, because it is the tenor of the whole article, and no particular part of it, which bears this construction. When the Constitution went before the States in State conventions some of the ablest of its framers, in their respective State conventions presented the same view of the subject: (Mr. Madison in the Virginia convention, (Elliot's Debates, volume 2, page 379;) Mr. Wilson in the Pennsylvania convention, (Elliot's Debates, volume 3, page 270;) Mr. Pinckney in the South Carolina convention, (Elliot's Debates, volume 4, page 265.)

The single remark of Governor Johnston in the constitutional convention of North Carolina, (Elliot's Debates, volume 3, page 145,) cited to the contrary, does not support the position for which it is used.

The single line quoted, "How could a man be removed from office who had no office?" was uttered *alio intuitu*, and is found in an argument addressed to the convention of North Carolina, to convince them that impeachment under the Federal Constitution would not include State officers, but was confined exclusively to officers under the Federal Government. I do not find a word in the whole argument having the slightest reference to the question now under consideration.

These men took part in framing the provision itself, and were equally active in making it understood by the people of their respective States when urging its adoption. This is all we have of the views of the framers of the Constitution itself beyond the language of that instrument.

My colleague, [Mr. BOUTWELL,] following the Senator from New York, [Mr. CONKLING,] has said that of one thing the people of the United States have rested in the firm conviction for a century, that no private citizen of this country is liable to impeachment before this tribunal. And the Senator from California [Mr. BOOTH] came back at last in his beautiful language to repose upon the same idea. Nothing can exceed the beauty of his description of the safety he found in this "inertia of acquiescence." He will permit me to say in passing that, as much as I admire his sleeping beauty, I am compelled in the light of history to differ with him in opinion as to her safety, and to modestly express the doubt that as she sleeps her very danger lies in her "inertia." But if these Senators mean to say merely that for the last century the people of this country have reposed in the belief that no one who has never held office can be arraigned at this bar upon articles of impeachment, there will be no dispute with them. But on the other hand—and it is best to keep as near the case at bar as we can—if they mean to say that the people have ever believed, before this case arose, that any official, high or low, guilty of high crimes and misdemeanors in office could escape all the constitutional consequences of his misconduct by announcing to the House of Representatives, who have the "sole power of impeachment," while that august tribunal is in the very process of presenting articles against him, that "one hour and forty minutes ago I resigned that office and thereby escaped all responsibility to the Constitution and to you to answer before this tribunal for my official misconduct"—if this is what is meant by Senators in their appeal to the century, I venture to say that the whole history of the Government does not afford a single authority for the assertion. On the contrary, there is much in that history and in the opinions of public men which requires an explanation at their hands. I have already cited the framers of the Constitution, both in the Federal and State conventions. The opinion of Mr. Rawle has already been cited. It is brief, it is true, but no words would make it more plain. It was his opinion, in a work of reputation in the profession, that men could be impeached as well out of office as in office. These were his words:

> From the reasons already given, it is obvious that the only persons liable to impeachment are those who are or have been in public office. All executive and judicial officers, from the President downward, from the judges of the Supreme Court to those of the most inferior tribunals, are included in this description. (Rawle on the Constitution, page 203.)

The House of Representatives in 1846 was certainly of opinion that they could impeach a man for high crimes and misdemeanors in office after he had left it, for they undertook deliberately such an impeach-

ment of Daniel Webster several years after he left the office of Secretary of State for what were charged to be such offenses while in that office. The precedent has already been referred to, but its full force and importance have not yet been given. Mr. C. J. Ingersoll, although a man of violent political prejudices, yet of ability as a lawyer, charged Mr. Webster in the House of Representatives with official corruption while in the office of Secretary of State, from which he had retired several years before. The charges were direct and specific with the asserted purpose of initiating proceedings in impeachment against that distinguished statesman. It was so understood by the House; and Mr. Bayley, of Virginia, who believed as Senators do here that impeachment would not lie against an official after he had left office, so understood Mr. Ingersoll and the purpose of his charge, and called his attention to the fact that Mr. Webster was out of office, and as he believed could not be impeached. Mr. Ingersoll's response was "What if he is?" To this objection of Mr. Bayley Mr. Adams made the reply which has already been cited in part, and which I shall take the liberty hereafter to quote in full. At the conclusion of Mr. Ingersoll's speech, on his motion the House called on the President for certain papers and information in the State Department which, as he alleged, would sustain the charges that he had made against Mr. Webster. The President replied in a lengthy message, which stated that the information called for touched the administration of the secret service of the State Department, which had always been held as confidential, and which he declined to disclose, unless the House of Representatives desired their use for the purpose of impeachment. He intimated that if that were the design of the House the papers would be disclosed to a committee appointed for that purpose. The President used this language upon the subject of impeachment, having no other application at the time than to an official after he had left office:

If the House of Representatives, as the grand inquest of the nation, should at at any time have reason to believe that there had been malversation in office by an improper use or application of the public money by a public officer, and should think proper to institute an inquiry into the matter, all the archives or papers of the executive department, public or private, would be subject to the inspection and control of a committee of their body, and every facility in the power of the Executive be afforded to enable them to prosecute the investigation.

Subsequently Mr. Webster, in the Senate, repelled the charges of Mr. Ingersoll with great bitterness, and Mr. Ingersoll renewed his accusations in the House with specific charges of dates, and sums, and individuals, and the manner in which the secret-service fund of the State Department had been, as he alleged, corruptly used by Mr. Webster. He concluded his speech with a remark which shows that it was made with the understanding that it should initiate proceedings looking to impeachment. He remarked:

A resolution or committee which I cannot institute will soon test the truth of my statements.

Whereupon a resolution was first offered by the friends of Mr. Webster calling for a committee to inquire by what means Mr. Ingersoll had become possessed of the secrets of the secret-service fund. Pending that resolution Mr. Pettit, of Indiana, subsequently a member of this body, and an able lawyer, moved as an amendment a resolution evidently alluded to by Mr. Ingersoll, which was in these words:

And that another select committee of five be appointed to inquire into the truth of the charges this day made by Mr. C. J. Ingersoll against Mr. Daniel Webster with a view of founding an impeachment against said Daniel Webster, and that said committee have power to send for persons and papers, books and vouchers.

Mr. Schenck, the mover of the first resolution said

If the gentleman will offer that as a separate proposition I will vote for it.

The resolution was adopted with the previous one, and a special committee appointed under its authority "with the view of founding an impeachment against said Daniel Webster," which proceeded to its work. That committee made two reports, and in neither of them did they encounter the difficulties suggested by this plea, that the accused had escaped beyond their reach when he left the office in which he was charged with corruption. The only difficulty they seemed to have encountered was that the facts did not sustain the charges. Why should these Senators rely upon the "inertia of acquiescence" for a century, when we find that not only Mr. C. J. Ingersoll, Mr. J. Q. Adams, and Mr. Schenck, but the whole House of Representatives of that day, with the exception, so far as the record shows, of Mr. Bayley, of Virginia, entertained without question the belief that, if an officer was guilty of high crimes and misdemeanors, no act of his own in form of resignation could relieve him from the constitutional consequences of his offenses? These proceedings may be found in the Congressional Globe, first session Twenty-ninth Congress. The remarks of Mr. Adams upon that question were in part cited by one of the managers, [Mr. HOAR.] I am moved to quote them in full from the remark of the Senator from Maine, [Mr. HAMLIN,] who was a member of the House at the time and who expressed to the Senate a day or two since the impression they made upon him, that they were simply an exultation of conscious rectitude upon the part of Mr. Adams and a boast that so far as any official act of his own was concerned he was ready now and to the remotest period of his life to answer to any impeachment therefor. These remarks were all that the Senator from Maine has stated they were; but they were much more, and when fully quoted the Senate will see that they were the deliberate expressions of that learned statesman, made not merely in the consciousness that he was without fear of their personal application, but an exposition of the Constitution itself. It will not be without profit or bearing upon this question to read them at length. They are follows:

And here I take occasion to say that I differ with the gentleman from Virginia [Mr. BAYLEY] and I believe other gentlemen who stated that the day of impeachment has passed by the Constitution the moment the public office expires. I hold no such doctrine. I hold myself, so long as I have breath of life in my body, amenable to impeachment by this House for everything I did during the time I held any public office.

Mr. BAYLEY. Is not the judgment in case of impeachment removal from office?

Mr. ADAMS. *And* disqualification to hold any office of honor, trust, or profit under the United States forever afterward; a punishment much greater, in my opinion, than removal from office. It clings to a man so long as he lives, and if any public officer ever put himself in a position to be tried by impeachment he would have very little of my good opinion if he did not think disqualification from holding office for life a more severe punishment than mere removal from office. I hold, therefore, that every President of the United States, every Secretary of State, every officer of the United States impeachable by the laws of the country is as liable twenty years after his office has expired as he is while he continues in office. And if such is not the case, if an officer could thus ward off the pains of impeachment, what would be the value of impeachment or when do you suppose that discoveries would be made that would render impeachment effectual? I speak with reference to the provisions of the Constitution and to the great objects contemplated by these provisions; and I now say that, if one-tenth of the charges against the person here attacked are true, impeachment, in my humble judgment, is the course that ought to be pursued by this House, and that in the process of impeachment the usual requisites of justice to every man charged with heinous crimes and misdemeanors should be complied with; that the accused should have notice of the impeachment; that he should have notice of the evidence to be made against him; that he may have the means of defense before the bar of this House; and that he may not be reached by side blows by applications for what may be dragged up out of the Department of State when he was in the office to injure him in the public mind probably for services of the first importance to the country.

There can be not doubt, I think, for whatever it was worth, the opinion of Mr. Adams was here given clearly, explicitly, and deliberately that the Senate has jurisdiction in cases like the one at bar. To break the force of this opinion, one of the counsel for the defense [Mr. Black] has remarked that Mr. Adams was always quarreling and was never happy when he was not in a fight, and that nothing would have delighted him so much as to be brought over into this presence from the House on articles of impeachment, which would give him an opportunity to strike right and left among his enemies. In the opinion of the counsel that was all this opinion of Mr. Adams was worth. The Senator from New York [Mr. CONKLING] has called our attention to the fact that Mr. Adams was seventy-nine years of age when he uttered this opinion, and intimated that it was that of a man, however great otherwise, much enfeebled by age. It is true that Mr. Adams was antagonistic in his nature, that he struck right and left among his enemies, but it is his good fortune that the judgment of history will be that he thus struck for the right. It is true, too, that he was seventy-nine years of age at this time; but he served his district many years thereafter in Congress with an ability unimpaired and with a vigor of mind which seemed to increase with his years, and there never was an hour that his eye was dim or his mental power enfeebled until his last utterance, as he laid down his life in harness, "This is the last of earth."

I have one other authority. Mr. Charles Francis Adams, in editing the works of John Adams which were published in 1852, had occasion to speak in that work himself of the little restraint upon the President under the Constitution against the exercise of corrupt and despotic power. And in the discussion of that question he assumed all along, as admitted, that the President could be impeached as well after as while in office. These are his words:

Assuming the main check which existed for forty years, the chance of re-election, to be definitely laid aside, it is not easy to put a finger upon any clause of the Constitution which can prevent an evil-disposed President for four years from using the powers vested in him in what way he pleases without regard to the people's wishes at all. Indeed it is possible to go a step further and to venture a doubt whether an adequate restraint can be found against the corrupt as well as despotic use of his patronage as well as the perversion of his policy. The only tangible remedy, that by impeachment, is obviously insufficient from the absence of all motive to wield a ponderous system of investigation after the offender has lost his power and when he is no longer of any consequence to the state. Of the sluggish nature of this process experience in cases of inferior magnitude is of frequent enough proof. The evidence necessary to convict an offender would not be likely to accumulate until a large part of his four years of service had expired and the remainder would probably elapse before it could be obtained. Then would come the election of a successor with a system in no wise responsible for that which preceded it and around which new interests would immediately concentrate. What probability is there of the ultimate infliction upon the guilty man, *now become a private individual removed from observation*, of any penalty adequate to his crime? But if this reasoning as to the absence of responsibility be only partially true it becomes perfectly plain that at least in the case of the President confining himself to the use of his legitimate powers in office, however unpalatable they may be, there can be of little of sovereignty exercised by the people during his term *or of punishment inflicted afterward.*—*Works of John Adams*, volume 6, page 408.

Thus clearly does the younger Adams stand with his father and grandfather, three most illustrious names, in maintaining this broad power of impeachment under the Constitution.

I have thus shown some authority from the framers of the Constitution, in the national convention and in the State conventions and from learned writers and able statesmen since, and I have shown at least one direct precedent strongly sustaining the theory that the framers of the Constitution did not either by design or, as the Senator from California [Mr. BOOTH] thinks, by mistake of arrangement so thwart the efficiency of their own work as to paralyze this great and efficient power of impeachment.

There is one more precedent bearing more or less upon this subject which has been frequently alluded to and which for a moment I de-

sire to notice. It is the impeachment of Barnard in the State of New York. It was under the constitution of 1846, which I do not understand differs materially in this respect from the Constitution of the United States. He was impeached while in office, but for offenses committed under another term of the same office. He had been judge of the supreme court eight years and had been re-elected, and while holding the office the second time was impeached for offenses committed during his first term. So far as the office was concerned in which the offenses were committed he had left it, but he was nevertheless a civil officer under the constitution of New York, although not holding identically the same office as that for the corruption in which he was impeached. This very much weakens the case as a precedent for either side, but I allude to it now merely to refer to the reason given by the Senator from Michigan [Mr. CHRISTIANCY] why it cannot be cited as a precedent for the impeachment of a man for official crime in office after he has left that office. It is said by that Senator that the reason the articles of impeachment were maintained in that case is because no period of time intervened between the expiration of the office in which the offenses were committed and the commencement of the office held by Barnard when proceedings were instituted. I infer from his remarks that had there been any considerable space of time intervening between those two offices the case would, in his opinion, have been otherwise. I cannot understand the force of this reasoning. The two offices were as distinct and separate and held by two as distinct commissions as if the one had been held by A and the other by B, and as if a period had elapsed between the two. Suppose Barnard had stepped from the office of judge of the superior court into that of judge of the supreme court, there would have been no intervening space; they had been both judicial offices, and yet they would have been as distinct and different in character and function as they were in name, and by no process of reasoning can I bring myself to the conclusion that, because the two distinct and separate offices filled under two distinct elections came close together in point of time, in any sense they were merged into one.

If in view of these authorities and of at least one clear precedent thus cited the people of this Republic have reposed in security under this provision of the Constitution for a century, as the Senator from New York [Mr. CONKLING] and my colleague [Mr. BOUTWELL] remarked, certainly no great danger to the liberties of the people lurks under this power of impeachment so construed and so understood. A century, if we are not in danger of overworking this word, has certainly done this much to quiet the fears of those who have dreaded so much the danger of following men into private life with the terrors and cruelties of this proceeding. The guards of the Constitution have thus proved a sufficient security against abuse.

I must not pass over the allusion of my colleague and others to the opinion of Mr. Justice Story so frequently invoked in the argument in this deliberation. My colleague says that the profession has for thirty-five years rested in the belief that Judge Story at least had declared in a well-considered commentary upon the Constitution his settled conviction that no official could be impeached after he had left office for high crimes and misdemeanors while in office. I will not venture to put my opinion of what has been understood by the profession against the larger experience and greater learning of my distinguished colleague; but he will permit me to say that while no one more than myself delights in the charm, the beauty, and the philosophy of Judge Story's works, I think that I do not differ with the profession in saying that after all no man has succeeded in gathering together the opinions of others without expressing his own so successfully as Judge Story. I cannot understand how the profession could ever come to the conclusion that, contrary to the current of all his other legal writings, Mr. Justice Story had expressed his own clear conviction upon this clause of the Constitution that the Senate had no jurisdiction to try any impeachment of an officer after he had left office, especially when Judge Story himself says that he never intended to express such an opinion.

Mr. BOUTWELL. Not quite that, I think.

Mr. DAWES. Most certainly that; exactly that. These are his words:

> It is not intended to express any opinion as to which is the true exposition of the Constitution on the points above cited. They are brought before the learned reader as matters still *sub judice*, the final decision of which may be reasonably left to the high tribunal constituting the court of impeachment when the occasion shall arise.

It is objected to the doctrine, Mr. President, that the common-law power of impeachment has been ingrafted into the Constitution, that it exposes officials, if not private persons, to every impeachment for any manner of delinquency or unfitness in office that the discretion of the House of Representatives may determine upon instituting and the Senate upon entertaining. Certainly there is nothing in the case at bar to render it necessary for us to determine how far the common-law power of impeachment might warrant a prosecution against an official or private citizen. If the limitations of the Constitution, in the fourth section of the second article, to treason, bribery, and other high crimes and misdemeanors is not a limit to the whole power of impeachment, but, as is claimed by some, is a mandatory clause for the removal from office of the officials therein named when thus convicted, certainly the case at bar comes within the express provision of that section; and it may be wiser and safer for us to wait until the occasion arises before attempting a construction that has no application to pending proceedings. But one can foresee occasions for the exercise of some power which, if it be not this, does not seem to exist anywhere in the Constitution for the necessary removal of officials, broader than the terms used in this section. One cannot read the proceedings in the impeachment of Pickering without being convinced that it was a removal from the office of judge for no other offense than imbecility and incompetency. Occasions of like character may arise hereafter when it will be absolutely necessary for the public safety to find some method for the removal of high officials not provided for in the Constitution if the cramped and narrow construction contended for shall prevail, but ample enough under the broad and healthy common-law power of impeachment. Suppose the Chief Justice of the United States becomes insane, or, by a softening of the brain or some other mysterious mental disease, he or some one of his associates becomes a mere harmless child, the public service would not permit their continuance in office; they could not be charged with treason, bribery, or any other high crime or misdemeanor. I know of no way of forcing them to give way to a public functionary who could discharge the duties devolving upon their office except by the method here suggested. I had, however, rather wait in the hope that no such unfortunate exigency will ever arise than to trouble myself to decide whether the common-law power of impeachment has been limited altogether by this section, or whether it will admit of a broader and more healthy application whenever the exigency may arise.

I cannot share in the alarm of Senators at the increase in power of the House of Representatives.

My colleague will permit me again to allude in all kindness to his remarks. He says that while the power of the House of Representatives has constantly increased in this great Government, that of the executive branch has in a corresponding degree decreased. I have not so understood it. From the necessity of the case—as the Government has enlarged its borders—States have multiplied, revenues have increased, and the institutions become diversified. Federal officers have also increased and multiplied many fold. While in the beginning they were stationed in the thirteen States along the Atlantic coast, they are now far on the borders, many thousand miles from the appointing power and any supervising personal control. Public moneys in passing through their hands have increased many hundredfold in amount. Sudden emergencies arise where nothing but their absolute integrity is security against temptation and corruption and fraud. In the very nature and growth of the Government the executive department has spread its power over the continent and multiplied its agencies and its consequent responsibility and liability and importance as the leaves of autumn. Compared with all this the power of the House of Representatives has hardly kept pace. If it had grown, it is in my opinion the grandest of all the powers in the Government. The people speak through it. By it are exercised the grants of all the great powers of the Government. It makes war; it raises armies; it builds navies; it imposes taxes; it collects the revenue; and, above and beyond all, it is the grand inquest of the nation. Commissioned anew once in two years in its great work, it is nearer the people than any other branch, and therefore speaks more clearly and more potentially their voice. No abuse of its power, in my opinion, can compare with that to which the executive department is daily exposed. Danger does not lie in the encroachment of the House of Representatives upon the executive branch.

Before concluding, Mr. President, I should do injustice to the efforts of the distinguished Senators from Indiana and Kansas [Mr. MORTON and Mr. INGALLS] if I did not allude to certain remarks which fell from both of them in the course of the arguments they addressed to the Senate in support of the plea of Mr. Belknap.

The Senator from Indiana [Mr. MORTON] called our attention, with a significance that could not be misunderstood, to the fact that the discussion in this body upon the question of jurisdiction commenced with three carefully prepared opinions in favor of jurisdiction, delivered first in order by three Senators all belonging to one of the political divisions of the Senate. He added the prediction that, however honestly we might struggle against it, we should ultimately divide on this judicial question much as we do on merely political ones. The Senator from Kansas, [Mr. INGALLS,] a little more explicit in his language, directly asserted that upon a doubtful question of constitutional law the democratic party in the Senate had arrayed itself on one side, aided by a few allies on the republican side. I desire to assure both these Senators that I have given to these admonitions of where my place should be on this question all the consideration which they deserved, but that they have failed to convince me of a duty to go counter to the clear convictions of my judgment in the construction of the Constitution of my country.

Senators in argument, failing to do away by construction with that clear, plain provision of the Constitution which authorizes this body to impose on conviction of official crime future disqualification to hold and enjoy any office of honor, trust, or profit under the United States, have thought it a proper consideration to urge that the provision itself is of little or no consequence. They have called attention to the fact that the accused in the case at bar, if guilty, has gone forever into private life, and by no possibility could hope for any public trust again. And they have said, "Of what use, then, to impose upon him, even if convicted, future disqualification?" I have already said, what I repeat, that it is not for us to weigh in the scales the comparative importance of the two penalties, removal from office and future disqualification, and decide which preponderates. It is

enough for us that the framers of the Constitution thought both necessary, and attached as much importance to the one as to the other. But I cannot concur with Senators that the judgment of future disqualification can possibly be a slight one. Men may not desire to hold office. It may be impossible for them ever to enter upon any public trust, but the brand upon the forehead that they are forever disqualified, beyond the power of pardon or any possible relief, to hold any office of honor, trust, or profit under the United States is in my opinion the severest possible penalty. The theory of the Government under which we live is that all men are not only free and equal, equal not only in the enjoyment of all political rights, but also of political privileges, equal in all the opportunities and in seeking the emoluments and honors of office of trust and of confidence. The citizen upon whose forehead rests the ban that he can never enjoy part or lot in this glorious inheritance has upon him, like the curse of Cain, a judgment of condemnation greater than any other it is possible for me to comprehend. Mr. Hale's thrilling story of a man without a country is but the story of him who goes in and out among his fellow-men in all time to come with the judgment of this Senate, from which nothing but death can relieve him, following him to the remotest borders of the land, "Thou art forever disqualified to hold any office of honor, trust, or profit under that Government whose flag protects all and whose avenues to honor and confidence are open to all against whom for official crime this Senate has not forever closed the door." Like the leper he stands alone, shunned by all clean men. The existence of this power in the Constitution, silent though it has been for a century, is as necessary as it is safe. No construction that I have been able or willing to give to that instrument will strike down this most efficient weapon of protection against the corruption or the despotic exercise of authority by the many officials who swarm the land. I may err in this construction. I had rather die in the error than be convinced with some Senators here that the framers of the Constitution by mistake paralyzed their own work, or with other Senators that by design they failed to provide the most efficient and the broadest restraint upon those placed in positions of honor and trust by a confiding people.

Opinion of Mr. Kernan,

Delivered May 29, 1876.

Mr. KERNAN. Mr. President, at this late stage of the discussion I intend to occupy the attention of the Senate but a short time. I would be content to give my vote without saying anything, except that the question to be now decided does not, in my opinion, require us to pass upon several other interesting questions which have been discussed. It is wise that every court should confine its decision to the point in judgment in the case before it. It is especially proper that a court constituted as this is should do so. The only question presented for decision is whether the respondent, William W. Belknap, late Secretary of War, is subject to impeachment by the House of Representatives and trial thereon by the Senate, after his resignation, for alleged misconduct while in office. I shall confine myself to stating briefly my reasons for the conclusion I have come to on this question.

The provisions of the Constitution as to impeachments are as follows, and are found in that instrument in the order in which they are quoted, namely:

> The House of Representatives * * * shall have the sole power of impeachment. (Article 1, section 2, subdivision 5.)
>
> The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present. (Same article, section 3, subdivision 6.)
>
> Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law. (Same article, section 3, subdivision 7.)
>
> The President * * * shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. (Article 2, section 2, subdivision 1.)
>
> The President, Vice-President and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." (Article 2, section 4.)
>
> The trial of all crimes, except in cases of impeachment, shall be by jury. (Article 3, section 2, subdivision 3.)

The decision of the question presented depends upon the meaning of these provisions of the Constitution. They are to be construed together, and force and effect should be given to all and each part of them if this can be done.

It is conceded that the Constitution confers power to impeach and try a person who is a civil officer of the United States and who has been guilty of bribery or other high crimes and misdemeanors in reference to his official duties. The respondent was a civil officer of the United States. The offenses alleged in the articles of impeachment are bribery and other high crimes and misdemeanors committed by him while in office and in connection with the discharge of his duties as such officer. He held one of the offices mentioned in section 4 of article 2 of the Constitution, and the crimes charged are of those enumerated in that section. According to the strictest construction of the Constitution which has been contended for by the counsel for the respondent or any Senator, it is conceded that the House of Representatives had power to impeach the respondent for these alleged offenses and the Senate power to try and convict him thereof, so long as he continued to be Secretary of War. It is indisputable that on the morning of the 2d of March, 1876, he was liable to impeachment for the alleged official misconduct. It is contended that by his resignation between ten and eleven o'clock a. m. of that day he ceased to be liable or subject to impeachment. The respondent subjected himself to the power of the House to impeach and to the jurisdiction of the Senate to try and convict him by committing while in office the crimes charged against him. He resigned the office before he was impeached. The only question for our decision is, does he continue liable to this same power of impeachment, trial, and conviction for these same official crimes after his official term is ended?

It has been urged by the counsel for the respondent that if he can be impeached for official misconduct after he ceases to be an officer every private citizen of the United States is liable to impeachment. This does not follow. There is no pretense that a private citizen who has never held an office under the United States is liable to impeachment for any offense he may have committed. Impeachment under our Constitution is clearly limited to persons who have been guilty of misconduct as officers of the United States. The case before us does not present, nor does its decision involve, the question whether a person who is elected or appointed to a civil office under the United States is impeachable while in office for crimes committed by him when he was a private citizen. Nor are we called upon to decide whether military or naval officers are liable to impeachment for misconduct in the discharge of their official duties. There is no question before us as to extending the power and jurisdiction of impeachment to a person who denies that he was ever liable to this procedure. The only question is, does a person who holds a civil office and by official misconduct becomes liable to impeachment and conviction therefor, escape from this liability by resigning the office or by the expiration of his term of office? It is not a question of bringing a party within the scope of this power by construction or implication. The question is, does a party who by official crime has rendered himself liable to be impeached and disqualified from ever holding again any office of honor, trust, or profit under the United States, cease to be liable the moment he goes out of office?

I have given this question the careful examination which its importance demands and have come to the conclusion that impeachments are not restricted to persons who are officers at the time the proceeding is commenced, and that a party who, while holding a civil office under the United States, is guilty of impeachable crimes is subject to impeachment therefor and conviction thereof after his official term is ended. In my judgment, this is the correct construction of the provisions of the Constitution on the subject of impeachments. By this instrument the "power of impeachment" and the "power to try all impeachments" are granted to the House and Senate, respectively. (Article 1, section 2, subdivision 5, and section 3, subdivision 6.) This power is granted in the same clear and explicit language in which many of the important powers granted by that instrument are conferred upon Congress and other departments of the Government. "The House of Representatives shall have the sole power of impeachment," "the Senate shall have the sole power to try all impeachments," is the language of the Constitution. (Article 1, section 2, subdivision 5; section 3, subdivision 6.) "The Congress shall have power to lay and collect taxes, duties, imposts, and excises; to regulate commerce," &c., is the language in which the important powers mentioned in section 8 of article 1 of the Constitution are granted. Power is conferred upon the President in the same language. (Section 2 of article 2 of the Constitution.)

What is the meaning of the terms "power of impeachment," "power to try all impeachments," as used in the Constitution? Mr. Hamilton, in the sixty-fifth number of the Federalist, mentions, what is well known, that the framers of the Constitution derived their notions of impeachments from the law and practice on the subject as they existed in England at that time. Mr. Rawle, in his work on the United States Constitution, page 210, says:

> Impeachments are thus introduced—

That is, into the Constitution—

> as a known, definite term, and we must have recourse to the common law of England for the definition of them.

At the time the Constitution was formed the "power of impeachment" was the authority by which the House of Commons prosecuted before the House of Lords persons who had been guilty of misconduct in the discharge of their official duty; and the "power to try all impeachments" was that which gave the Lords jurisdiction to try, convict, and pronounce judgment upon the persons so accused. By the law and practice in England the power to impeach parties for official misconduct extended and was exercised against them whether they were in or out of office at the time the impeachment was commenced. The terms "power of impeachment," "power to try impeachments," imported in their most restricted and legitimate sense in the English law and practice authority and jurisdiction to impeach and convict parties who had violated their official duty to the detriment of the public, whether they continued in office or had ceased to be officers when the proceeding was commenced.

Many of the most noted cases of impeachment which had occurred

in England during a hundred years immediately prior to 1777 were cases in which the parties impeached and tried for official crime had ceased to be officers long before they were impeached. The framers of the Constitution were familiar with the law and practice as to impeachments as the same then existed in England. The judgment on conviction in England might affect the property, the liberty, or the life of the person convicted. The framers of the Constitution by an express provision declare that judgment in cases of impeachment shall not "extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States." By the English law and practice a majority was sufficient to convict the party impeached. The framers of the Constitution by an express provision declare that "no person shall be convicted without the concurrence of two-thirds of the members present." If the framers of the Constitution intended that the "power of impeachment" and "the power to try impeachments" should be limited to persons in office at the time of the procedure, and should under no circumstances be exercised against parties no longer in office but who while in office had been guilty of official crimes, it seems to me they would have so declared in express language.

Impeachment in our Constitution was intended to be something more than a procedure to remove from office a party whose official crimes are discovered while he is still holding the office. It was intended to reach the corrupt official and disqualify him from ever holding office again, notwithstanding he was able to conceal his misconduct until after his term of office had expired. The character of the men who framed and the language they use in the Constitution forbid, in my judgment, a construction which would permit a dishonest officer to enrich himself by corrupt practices highly detrimental to the public welfare and escape conviction and a judgment disqualifying him to hold any office thereafter by resigning. Certainly the power to impeach and to try impeachments, granted in express terms in the first article of the Constitution, should not be construed to have this limited application unless there is language in the subsequent provisions of the instrument which requires this construction.

It has been contended that the provision that "judgments in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States," is repugnant to the exercise of the power of impeachment against a person who is no longer in office. The argument is that because he cannot be removed as well as disqualified by the judgment he is not impeachable. The argument might have some weight if the provision in question declared that the judgment should be removal from office and disqualification to hold office. But it does not. It simply provides that the judgment shall not extend further than to removal and disqualification. It may be either. So far from this provision furnishing an argument against the power to impeach a person for official misconduct after he has ceased to hold the office, the argument to be drawn from it is to the contrary. This provision shows that one of the objects of the procedure was to disqualify a person whose misconduct as an officer rendered it just and wise, in the judgment of the Senate, that he should not again be intrusted with the administration of public affairs.

It is contended that section 4 of article 2 of the Constitution limits the power of impeachment to persons in office at the time the procedure is commenced. This, in my judgment, is not correct. The power to impeach and to try impeachments is not conferred by this section. This power is given to the House and Senate, respectively, by the provisions in article 1 above referred to. The most that can be justly claimed is that section 4 restricts impeachments to the persons who shall hold the offices designated in that section, and who shall while in office be guilty of the crimes therein mentioned. Thus construed, it is in harmony with the provisions of article 1. The prior provision, that the judgment shall not extend further than to removal from and disqualification to hold office, construed in connection with section 4, makes it mandatory that if the party convicted is in office he shall be removed, and leaves it in the discretion of the court to disqualify him or not.

It is urged that the language of section 4 is "the President, Vice-President and all civil officers of the United States shall," &c., and therefore no one except a person then actually holding one of these offices can be impeached; that when he ceases to be an officer his liability to impeachment for official misconduct while in office terminates. In my judgment, this is not the meaning of this language. This language is used to designate the persons who are impeachable. The person who while acting as one of the officers named is guilty of the crimes mentioned is impeachable, whether he is still in office or has resigned. It is the person, not the officer, who is impeached and convicted. This is the opinion expressed by Mr. Rawle in his treatise on the Constitution, page 213:

> From the reasons already given it is obvious that the only persons liable to impeachment are those who are or have been in public office.

Language similar to that under consideration is employed constantly in penal statutes. Section 1788 of the Revised Statutes of the United States is an example. It declares that "every officer of the United States concerned in the disbursement of the revenues thereof," who does certain acts mentioned, "shall be deemed guilty of a misdemeanor and punished by a fine of $3,000, and shall, upon conviction, be removed from office and forever thereafter be incapable of holding any office under the United States." In section 1789 it is declared that "every officer concerned in the collection of the revenue," who commits certain acts, shall, on conviction, be punished as therein described. Section 1781 declares that "every member of Congress or officer of the Government who takes a bribe" shall, on conviction, be punished by fine and imprisonment. Can it be successfully claimed that the person who was an officer, and as such violated these statutes, is liable to impeachment and conviction only while he was such officer? Clearly not. He continues liable after he ceases to be an officer.

In my judgment, the respondent continued liable to impeachment for his alleged official misconduct after he ceased to be Secretary of War. The plea to the jurisdiction should, therefore, be overruled.

Opinion of Mr. Cragin,

Delivered May 29, 1876.

Mr. CRAGIN. Mr. President, two things in this case are conceded by every Senator, namely: That at the time of the impeachment of William W. Belknap, by the House of Representatives, he was not a civil officer of the United States, having resigned prior to his impeachment, and that he had a full and perfect moral and legal right to resign. The fact appears of record that he resigned his office of Secretary of War at ten o'clock and twenty minutes, in the forenoon of the 2d of March last, and that the House took no proceedings against him till the afternoon of the same day. On the next day the first official notice of the proceedings was brought to the Senate, in the form of the following House resolution:

> *Resolved*, That a committee of five members of this House be appointed and instructed to proceed immediately to the bar of the Senate, and there impeach William W. Belknap, late Secretary of War, in the name of the House of Representatives and of all the people of the United States of America, of high crimes and misdemeanors while in office, and to inform that body that formal articles of impeachment will in due time be presented, and to request the Senate to take such order in the premises as they may deem appropriate.

It will be observed that the House, in its initiatory proceedings in this case, described William W. Belknap as "*late* Secretary of War."

If there be any doubt as to his right to resign, or that his resignation was effectual, I quote as follows from the decision of the Supreme Court in the case of The United States *vs.* Wright, 1 McLean's Reports, page 512:

> There can be no doubt that a civil officer has a right to resign his office at pleasure; and it is not in the power of the Executive to compel him to remain in office. It is only necessary that the resignation should be received to take effect; and this does not depend upon the acceptance or rejection of the resignation by the President.

When this discussion commenced, on the 16th of May, I had not made up my mind on the question under consideration; but I strongly inclined to the opinion that the Senate had jurisdiction to try the respondent, notwithstanding his resignation prior to impeachment by the House. I confess that I was provoked at the idea that any person could, by voluntary resignation, just before and in view of presentment, arrest proceedings in a case of impeachment, and especially in the case under consideration. A man who had just held a high position, intimately and confidentially connected with the Chief Executive of the United States, was charged with high crimes in office, crimes most disgraceful to him, dangerous to the public good, abhorrent to the public sense, and humiliating to the party whose trusted representative he was.

Under these circumstances I looked eagerly for the power to try him, and if found guilty, to lay the strong hand of the law upon him with all its weight and consequences. My sense of right was outraged; my pride as an American citizen and friend of the party in power was deeply wounded; and I looked for some way to satisfy justice, vindicate the honor of the nation, and at the same time brand the offender and make an example of him, if found guilty.

I do not suppose any other Senator will make this confession, but I do not believe I am alone in this regard. I do not put this forward as any merit on my part, but mention it simply to show how the human judgment is influenced and embarrassed, when called upon to decide questions of a judicial character, when mixed with strong personal or party considerations, and how difficult it is, even with men who mean to do right, to rise above and look beyond the case which has aroused their feelings and caused their indignation. Under these circumstances I commenced work to find jurisdiction in this case. I read and reread all the constitutional provisions on the subject of impeachment. I read carefully the proceedings on this subject of the convention that framed the Constitution; I read the commentaries of the two leading American authors—Story and Kent—on the subject of impeachment, and studied the American precedents under the Federal and State constitutions.

I have listened attentively to the arguments of learned and able Senators on both sides of the question till, in spite of my inclination and almost determination to the contrary, I am reluctantly forced to the opinion that the Senate has no jurisdiction to try a person not in office at the time of his impeachment. The provisions of the Constitution are as follows:

> The House of Representatives shall have the sole power of impeachment. (Article 1, section 2.)
>
> The Senate shall have the sole power to try all impeachments. When sitting for

that purpose they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside. And no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law. (Article 1, section 3.)

The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. (Article 2, section 4.)

By article 1, section 2, it appears that the House of Representatives has the sole power of impeachment. By this I understand that the House of Representatives, and only the House of Representatives, can institute, present, and prosecute impeachments; that they are the grand inquest to indict and prosecute the indictment, and that no other body has this power.

The word "*sole*" does not qualify the power, but only locates it. It makes the House of Representatives the sole agent for instituting impeachments. The power is lodged with them, and nowhere else. Impeachment is a peculiar function of the House of Representatives according to the clause in the Constitution before referred to. If the word "exclusive" had been used instead of "sole," its meaning would have been the same. The same word is used in conferring upon the Senate the power to try impeachments. They have the "*sole*" or *exclusive* power to try all impeachments. This is one of the functions of the Senate, and is the function of no other body. The Senate acts in the capacity of court and petit jury to try and decide all matters of law and fact arising in all cases of impeachment under the Constitution.

I did not think of looking to the clauses of the first article for the parties who could be impeached and tried, or for impeachable offenses, but able Senators have argued that these are the jurisdictional clauses. It is claimed that under them the House of Representatives have all the powers of impeachment possessed by the House of Commons in England, by its parliamentary and common law, except as restricted by the Constitution; and that the only restriction is as to the judgment that may be rendered.

As to persons and offenses, the common law of England, or rather the parliamentary law of England, prevails, and is the rule of action under our Constitution. This is the doctrine boldly proclaimed by some of the managers in this case and by many Senators on this floor. I cannot subscribe to this doctrine, for it is well known that, by the parliamentary law of England, every subject of the realm is liable to impeachment, and for any offense, in the discretion of the impeaching power. I do not believe that the bloody code of impeachment in England was incorporated into our Constitution; but I will defer further remarks upon this point to another part of my opinion.

The clause in article 1, section 3, which declares that "judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office," &c., limits the *utmost* judgment that the Senate can pronounce, namely: "removal from office and disqualification to hold office." The only less judgment specified is that of "removal from office," as found in article 2, section 4. From this I infer that there are only two judgments that the Senate can impose in cases of impeachment, namely, "removal from office" and "removal from office and disqualification to hold and enjoy any office," &c.

In both cases there must be removal, and therefore the person tried must be an officer, or otherwise he could not be removed. This fact would seem to define the persons who can be impeached and tried, and to limit the jurisdiction to such persons. Before I had carefully studied article 2, section 4, in connection with the clause about judgment in article 1, section 3, I inferred that there might be a judgment less than "removal from office," and that therefore a person not in office might be impeached and tried. I could think of no such judgments except suspension from office or censure. But suspension would work removal, and either House of Congress can censure a person without invoking the power or machinery of impeachment.

Article 2, section 4, describes the persons who may be impeached, and the offenses for which they may be impeached, and this is the only part of the Constitution that does in any way designate the persons, or the offenses, subject to impeachment. This provision of the Constitution is as follows:

The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

This provision, in my opinion, describes all the persons who can be impeached and convicted under the Constitution of the United States; and it is the fountain of jurisdiction. *No person can be impeached or convicted unless he be President, Vice-President, or some civil officer of the United States.* To my mind this is conclusive. The fact that under this section the judgment must be "removal from office" is demonstrative that a person not in office and not subject to removal cannot be tried on articles of impeachment.

It is admitted on all sides that all the provisions of the Constitution on the same subject must be taken and construed together. The last section is as binding as the first, and the whole must be made to harmonize and agree. The fourth section of the second article should stand first, for it is the body and substance of impeachment in the Constitution. All else describes the functions of the two Houses of Congress and the mode of proceeding. The House only can impeach, the Senate only can try, &c. When the President is tried the Chief Justice shall preside; it shall require two-thirds of the members present to convict, &c.,

But who can be impeached and tried, and for what they can be impeached and tried, can only be determined by the fourth section of the second article.

I construe and render the Constitution on the subject of impeachment as follows:

The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment by the House of Representatives for, and conviction by the Senate of, treason, bribery, or other high crimes and misdemeanors; and judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States, but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law. The Senate when sitting for the trial of an impeachment shall be on oath or affirmation. When the President of the United States is tried the Chief Justice shall preside, and no person shall be convicted without the concurrence of two-thirds of the members present.

In this arrangement of the constitutional provisions, on the subject of impeachment, I submit that I have in no way changed its meaning. I have arranged its provisions in different order and brought them all together. I place the fourth section of the second article in front, where it belongs. If the Constitution had been arranged in this way, by the convention that framed it, there would not be five Senators in this Chamber who would claim jurisdiction in this case.

It is well known that the convention after it had agreed upon the provisions of the Constitution referred its work to a committee of "detail and arrangement." That committee arranged the provision under different heads. What pertained to the House of Representatives they arranged under article 1, section 2; what pertained to the Senate they placed under section 3 of the same article; and what pertained to the President, under article 2, sections 1, 2, 3, and 4.

No one can give any reason why section 4 of said article was placed in this position, only that the President is the first officer named. I contend it would have been better if the provisions on the subject of impeachment had been arranged together as I have arranged them.

I wrote out this arrangement before I had opened the Commentaries of Story or Kent, and simply from reading and study of the Constitution itself. I previously arranged the clauses of the Constitution in the order as they now stand, with the fourth section of the second article as an *exception* to the general power of impeachment, as claimed by many Senators, but this I soon rejected. If this clause is an exception, how broad and universal must be the general power? It must embrace every citizen of the United States. This cannot be the American doctrine.

I was gratified to find my opinion "that only civil officers of the United States could be impeached" confirmed by Judge Story, and that my construction and rendering of the Constitution was almost identical with that of Chancellor Kent.

I read from Story's Commentaries on the Constitution, § 789. The fourth section of the second article is quoted as follows:

The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Story then proceeds:

From this clause *it appears* that the remedy by impeachment is strictly confined to civil officers of the United States, including the President and Vice-President. In this respect it differs materially from the law and practice of Great Britain. In that kingdom all the king's subjects, whether peers or commoners, are impeachable in Parliament, though it is asserted that commoners cannot now be impeached for capital offenses, but for misdemeanors only. Such kind of misdeeds, however, as peculiarly injure the commonwealth by the abuse of high offices of trust are the most proper and have been the most usual grounds for this kind of prosecution in Parliament. *There seems a peculiar propriety, in a republican government at least, in confining the impeaching power to persons holding office.*

I will read section 803:

As it is declared in one clause of the Constitution "that judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold any office of honor, trust, or profit under the United States," and in another clause that "the President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes or misdemeanors," *it would seem to follow* that the Senate, on the conviction, were bound in all cases to enter a judgment of *removal from office*, though it has a discretion as to inflicting the punishment of disqualification. If, then, there must be a judgment of removal from office, *it would seem to follow that the Constitution contemplated that the party was still in office at the time of impeachment.* If he was not, his offense was still liable to be tried and punished in the ordinary tribunals of justice. And it might be argued with some force that it would be a vain exercise of authority to try a delinquent for an impeachable offense when the most important object for which the remedy was given was no longer necessary or attainable. And although a judgment of disqualification might still be pronounced, the language of the Constitution may create *some doubt* whether it can be pronounced without being coupled with a removal from office. There is also *much force* in the remark that an impeachment is a proceeding purely of a political nature. It is not so much designed to punish an offender as to secure the State against *gross official misdemeanors.*

Removal from office is the main object of impeachment, and if the person has resigned his office that object is accomplished; and, as Judge Story says, impeachment in such a case "would be a vain exercise of authority." If a crime has been committed the party cannot escape by resignation of his office, but is subject to be tried and

punished in the ordinary courts of justice, and that punishment may include perpetual disqualification to hold office.

In volume 1, page 289, of his Commentaries, Chancellor Kent, in construing and rendering the Constitution of the United States on the subject of impeachment, embraces the whole in the following language, putting the fourth section of the second article foremost:

The President, Vice-President, and all civil officers of the United States may be impeached by the House of Representatives for treason, bribery, and other high crimes and misdemeanors, and upon conviction by the Senate shall be removed from office.

In the opinion of Kent this embraces all that there is of substance on this subject in the Constitution. I am confident he is right.

I now turn to the proceedings of the convention that framed the Constitution, and if I am not mistaken they will throw light upon the meaning of the provisions on the subject of impeachment. This convention commenced its proceedings on the 25th day of May, 1787. On the 29th of May Mr. Edmund Randolph, of Virginia, offered a series of resolutions giving his ideas of the Constitution that should be framed. Under the head of the judiciary, and among the powers to be conferred upon the Supreme Court, he mentions "impeachments of any national officer."

On the same day Mr. Charles Pinckney, of South Carolina, submitted a draft of a federal government which, in many respects, is identical with our present Constitution. In article 3 he says:

The House of Delegates shall exclusively possess the power of impeachment.

This is the exact meaning of the provision in the Constitution as granted to the House of Representatives, as I have heretofore claimed. In article 10, on the subject of the Supreme Court, he extends its jurisdiction "to the trial of impeachment of *officers of the United States*."

It will be observed that Mr. Randolph contemplated impeachment of national officers only, and that Mr. Pinckney contemplated impeachments of officers of the United States, both meaning the same thing. On the 13th of June it was moved by Mr. Randolph and seconded by Mr. Madison—

That the jurisdiction of the national judiciary shall extend to *impeachments of any national officer*.

Bear in mind that only *officers* are mentioned by these leading members of the convention. On the 15th of June Mr. Patterson offered propositions for a form of government. In his fourth resolution, in relation to the Chief Executive, he provides "that he shall be ineligible a second time, and *removable* on impeachment and conviction of malpractice or neglect of duty by Congress, on application by a majority of the executives of the several States." In his fifth resolution, providing for a federal judiciary, he says:

That the judiciary so established shall have authority to hear and determine in the first instance on all impeachments of *Federal officers*.

On the next day Colonel Hamilton submitted a plan of government, the ninth paragraph of which is as follows:

The governors, Senators, and all *officers* of the United States to be liable to impeachment for mal and corrupt conduct; and upon conviction to be removed from office.

On the 19th of June Mr. Gorham reported, from the committee to whom was referred the several plans and propositions, a series of resolutions. In the ninth article it is provided that the Executive is to be "removable on impeachment and conviction of malpractice or neglect of duty."

In the thirteenth "impeachment of national officers" is a power given to the national judiciary.

On the 6th of August Mr. Rutledge reported from the same committee a draft of a constitution. Article 4, section 6, is as follows:

The House of Representatives shall have the *sole power* of *impeachment*. It shall choose its Speaker and other officers.

Article 10, section 2, relates to the Executive, and provides that—

He shall be removed from his office on impeachment by the House of Representatives, and conviction in the Supreme Court of treason, bribery, or corruption.

Article 11, section 3, provides that the jurisdiction of the Supreme Court shall extend "to the trial of impeachments of *officers* of the United States."

This draft of the Constitution, submitted by Mr. Rutledge, was under consideration by the convention for several days. Each article and section was considered separately.

On the 27th day of August the following was adopted by the convention:

He shall be removed from his office on impeachment by the House of Representatives, and conviction in the Supreme Court of treason, bribery, or corruption.

Up to this time no suggestion had been made in the convention to give the Senate the power to try impeachments. It had been determined to give that power to the Supreme Court.

On the 4th of September Mr. Brearly, from the committee of eleven, reported partially. Paragraph 3 of said report is as follows:

In the place of the ninth article, first section, to be inserted: "The Senate of the United States shall have power to try all impeachments; but no person shall be convicted without the concurrence of two-thirds of the members present."

The same report provides that the latter part of the second section, tenth article, shall read as follows:

He shall be *removed* from *his office* on impeachment by the House of Representatives, and conviction by the Senate for treason and bribery.

The convention proceeded to consider this report by paragraphs, and on the 8th of September it was agreed to insert, after the word "bribery," in section 2, article 10, "or other high crimes and misdemeanors against the United States."

On the same day the following clause was added after the words "United States:"

The Vice-President and other civil officers of the United States shall *be removed* from office on impeachment and conviction as aforesaid.

On the same day the convention voted to substitute the following in place of the first section, ninth article:

The Senate of the United States shall have power to try all impeachments; but no person shall be convicted without the concurrence of two-thirds of the members present, and every member shall be on oath.

After this, and on the same day, a committee of five was appointed "to revise the style of, and arrange, the articles agreed to by the house."

It was not intended that this committee should in any way change the meaning of the provisions of the Constitution as adopted by the convention, but only to "revise the style and arrange the articles" under proper heads. The fourth section of the second article, as it now stands in the Constitution, went to this committee in the following language:

He—

The President—

shall be removed from his office on impeachment by the House of Representatives and conviction by the Senate for treason, bribery, and other high crimes and misdemeanors against the United States. * * * The Vice-President and other civil officers of the United States shall be removed from office on impeachment and conviction as aforesaid.

I wish to place the fourth section of the second article, as it came from that committee and now stands, side by side with the article referred to them, that all may see that the meaning was not changed. The following is the fourth section of the second article:

The President, Vice-President and all civil officers of the United States, shall be *removed from office* on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

The article is made shorter, repetitions are avoided, and some words are omitted. Nothing is said of the House of Representatives or Senate, for it is provided elsewhere in the Constitution that the House of Representatives have the power to impeach, and the Senate the power to try and convict. The substantial meaning is identically the same, and Chancellor Kent was correct in his rendering of the Constitution on this subject.

The committee on style and arrangement made its report on the 12th of September, and their draught was not changed on the subject of impeachment, except the words "or affirmation" were added to the requirement that Senators should be "on oath" in the trial. No person can fail to see that not a word was uttered by any member of the convention, and nothing appears in the proceedings, in any way implying that impeachment was intended to apply to any person unless he was *actually in office* at the time of impeachment; and it is manifest that the proceeding was only intended as a means for the *removal from office* of a dangerous, corrupt, and unworthy official.

"National officers," "Federal officers," "officers of the United States," are the only persons mentioned in the plans submitted by Randolph, Pinckney, Patterson, and others; and finally the convention limited impeachment to the "*President, Vice-President and all civil officers of the United States*." How, then, is it possible that a man not a President, Vice-President, or a civil officer of the United States can be impeached under the Constitution? It is manifest to my mind that the *person to be impeached must be a civil officer of the United States still in office*, and that the object of impeachment "is removal from office," to which may be added, in the *discretion* of the Senate, disqualification to hold office, &c., under the United States.

The practice for one hundred years, ever since the adoption of the Constitution, has been in accordance with this theory. No person has been impeached and tried, under the Constitution, except he was at the time of impeachment a *civil officer*. In every case where impeachment has been attempted and the officer has resigned, even after impeachment by the House, the proceedings have instantly stopped, except in this single case. This case stands alone. No precedent under the Constitution of the United States or of any State can be found. The recent case of Governor Ames, of Mississippi, is in point, as also the one of Judge Barnard in New York.

The first case of impeachment under the Constitution of the United States was that of William Blount, and the decision of the Senate in that case, that they had no jurisdiction to try him "because he was not a civil officer of the United States within the meaning of the Constitution," ought to decide this case in the same way, for the truth is exactly that. Let us refer to the facts in the Blount case. On the 3d of July, 1797, the President, John Adams, sent to the Senate and House of Representatives a message in relation to transactions of William Blount, a Senator from Tennessee. I do not intend to go fully into the history of this case. It appears, however, that his crime, if it was a crime, had no necessary connection with his office of Senator.

On the 7th of July Mr. Sitgreaves, a member of the House, by order of the House came to the Senate and impeached William Blount in the form now usual in such cases. On the next day, July 8, the Senate expelled William Blount from a seat in that body. The articles of impeachment were not presented by the House till the 7th day of February, 1798. After the usual pleas, on the 3d of January, 1799,

the Senate sitting as a court of impeachment heard arguments from the managers, on the part of the House, and counsel for the respondent, on the question of jurisdiction. The arguments upon this question occupied four days; that of Manager Bayard, in favor of jurisdiction, was very able, and has not been surpassed, if equaled, in the trial of the case now under consideration. He contended that the House of Representatives had the sole power of impeachment, and that the Senate had the sole power to try all impeachments, and that these clauses gave jurisdiction to the House to impeach, and the Senate to try, all persons and for all offenses, that the House of Commons could impeach and the House of Lords try in England. He urged that as there is no description of offenders or the offenses, in the Constitution itself, where the power is vested, every offender and every offense, impeachable according to the common law of England, must be deemed impeachable here; and he alleged that the common-law power of impeachment extends to every crime or misdemeanor that can be committed by any subject *in or out of office.*

This is his language:

The Constitution has said who shall have the power to impeach, and who of trying impeachments. It has also limited the extent of the punishment. But it has not described the persons who shall be the objects of impeachment, nor defined the cases to which the remedy shall be confined. We cannot do otherwise, therefore, than presume, upon these points, we are designedly left to the regulations of the common law. The question therefore is, what persons, for what offenses, are liable to be impeached at common law? And I am confident, as to this point, the learning and liberality of the counsel will save me the trouble of argument, or the citation of authorities, to establish the position that the question of impeachability is a question of *discretion* only, with the Commons and Lords. Not that I mean to insist that the Lords have legal cognizance of a charge of a capital crime against the commoner, but simply that all the King's subjects are liable to be impeached by the Commons and tried by the Lords upon charges of high crimes and misdemeanors.

He then goes on to show how important it would be, under certain circumstances, to impeach a citizen not in office, but possessed of extensive influence arising from popular arts, from wealth or connections, and actuated by strong ambition, if that citizen should by intrigue, corruption, or force seek to place himself in the presidential chair or some other high office. He contended that absolute and perpetual disqualification to hold any office, under the Government, would be a suitable punishment, and that the same is provided for under the Constitution.

Mr. Bayard boldly and frankly accepted the logical consequences of his argument, which, I am sorry to say, some of the Senators, who hold that the Senate has jurisdiction in case of William W. Belknap, shrink from doing. They hold the same construction of the Constitution, but claim that in England only men in office, or who have held office, or who are connected with some official trust, are liable to impeachment; and they seek to limit impeachment to the same classes in this country under our Constitution. There is no authority for such limitation. All authorities agree with Mr. Bayard in saying, "that all the king's subjects are liable to be impeached and tried, except only on a charge of a capital crime."

On the 10th day of January, 1799, the Senate sitting as a court of impeachment voted on the following resolution:

That William Blount was a civil officer of the United States, within the meaning of the Constitution of the United States, and therefore liable to be impeached by the House of Representatives.

And the vote stood—yeas 11, nays 14.

The majority therefore decided against the resolution, or, in other words, that a person *not a civil officer of the United States,* within the meaning of the Constitution, and *because* he is not a civil officer, *is not* liable to be impeached by the House of Representatives.

On the day following, upon motion, it was determined that—

The court is of the opinion that the matter alleged in the plea of the defendant is sufficient in law to show that this court ought not to hold jurisdiction of the said impeachment, and that the said impeachment is dismissed.

Yeas 14, nays 11.

The plea was "that he, the said William Blount, *is not now* a Senator and *is not an officer* of the United States," &c.

If the name of William W. Belknap should be substituted for that of William Blount, in the resolution voted upon on the 10th of January, 1799, and a majority of the present court should vote against it, as in that case, we should decide against jurisdiction, and that would end this case. Precisely the same reason exists in this case, for the want of jurisdiction, that existed in the Blount case; namely: that Belknap *is not,* and *was not* at the time of his impeachment, a "civil officer of the United States, within the meaning of the Constitution of the United States," and for this reason the case should be dismissed, for want of jurisdiction. Did any harm come to the Republic because William Blount was not disqualified to hold office under the United States? He was expelled from the Senate and never returned, and never afterward held any office under the United States.

If Belknap had committed suicide at the same time he resigned the office of Secretary of War he would not be more politically dead than he is at this moment.

It will be a vain exercise of power to disqualify him to ever hereafter hold office under the United States. The people have convicted and disqualified him, and from their verdict there is no appeal. I do not know of anything that will scorch and wither a public man more than the condemnation of an aroused and indignant people.

Thomas Jefferson was Vice-President during the trial of William Blount, and on the 8th of February, 1798, the day after the articles of impeachment were presented to the Senate, he wrote a letter to James Madison, from which the following is an extract:

Articles of impeachment were yesterday given in against Blount. But many great preliminary questions will arise. Must not a formal law settle the oath of the Senators, form of pleadings, process against person or goods, &c.? May he not appear by attorney? Must he not be tried by a jury? Is a Senator impeachable? Is an ex-Senator impeachable? You will readily conceive that these questions, to be settled by twenty-nine lawyers, are not likely to come to a speedy issue.

On the 15th of February, the same year, he wrote to Mr. Madison again, and the following is what he says on the subject of impeachment:

This day the question of the jury in cases of impeachment comes on. There is no doubt how it will go. The general division of the Senate is 22 and 10; and under the probable prospect of what it will forever be. I see nothing in the mode of proceeding by impeachment but the most formidable weapon for the purposes of dominant faction that ever was contrived. It would be the most effectual one of getting rid of any man whom they consider as dangerous to their views, and I do not know that we could count on one-third in an emergency. All depends, then, on the House of Representatives, who are the impeachers; and there the majorities are of one, two, or three only, and these sometimes one way and sometimes another. In a question of pure party they have the majority, and we do not know what circumstances may turn up to increase that majority temporarily, if not permanently. I know of no solid purpose of punishment which the courts of law are not equal to, and history shows *that in England impeachment has been an engine* more of *passion* than *justice.*

Again, on the 22d of February, Jefferson writes to Mr. Madison as follows:

You will see in the papers the ground on which the introduction of the jury into the trial by impeachment was advocated by Mr. Tazewell and the fate of the question. Reader's motion, which I inclose you, will probably be amended and established, so as to declare a Senator unimpeachable, absolutely; and yesterday an opinion was declared that not only *officers of the State governments, but every private citizen of the United States are impeachable.* Whether they will think this the time to make the declaration I know not, but if they bring it on I think there will not be more than two votes north of the Potomac against the *universality of the impeaching power.*

I would here state that there was not a single vote south of the Potomac in favor of jurisdiction in the Blount case.

Mr. Madison, who is regarded as the father of the Constitution, replies to Mr. Jefferson in a letter dated March 2, 1798. What he says upon the subject of impeachment is as follows:

Mr. Tazewell's speech is really an able one in defense of his proposition to associate juries with the Senate in cases of impeachment. His views of the subject are so new to me that I ought not to decide on them without more examination than I have had time for. My impression has always been that impeachments were somewhat *sui generis* and excluded the use of juries. The terms of the amendment to the Constitution are indeed strong, and Mr. T. has given them, as the French say, all their luster. But it is at least questionable whether an application of that amendment to the case of impeachments would not push his doctrine farther than he himself would be disposed to follow it.

It would seem also that the reservation of an ordinary trial by jury must strongly imply that an impeachment was not to be a trial by jury. As removal and disqualification, the punishments within the impeaching jurisdiction, were chiefly intended for officers in the executive line, would it not also be difficult to exclude executive influence from the choice of juries? Or would juries armed with the impeaching power, and under the influence of an unimpeachable tribunal, be less formidable than the power as *hitherto understood to be modified?* The universality of this power is the most extravagant novelty that has been yet broached, especially coming from a quarter that denies the impeachability of a Senator. Hardy as these innovators are, I cannot believe they will venture yet to hold this inconsistent and insulting language to the public.

In this extract Mr. Madison says that impeachments were "intended *chiefly* for *officers* in the *executive* line." There is no doubt it was intended exclusively for executive and judicial "officers" of the United States. It is well known that Mr. Madison was a leading member of the convention that framed the Constitution, and no man knew better than he did, ten years after the work was done, the intended meaning of the Constitution. In commenting upon the power claimed in the Blount case, which was precisely like that claimed in the present one, Mr. Madison says:

The universality of this power is the most extravagant novelty that has yet been broached.

It is here implied that no such idea ever entered into the minds of the framers of the Constitution, and that of all the *novelties* this is the most *extravagant.* I place the opinion of James Madison against that of all the Senators who believe in the *universal power* of impeachment.

Bearing upon this subject, Mr. Jefferson, on the 18th day of August, 1799, wrote to Edward Randolph, a leading member of the constitutional convention, as follows:

Of all the doctrines that have been broached by the Federal Government, the novel one, of the common law being in force and cognizable as an existing law in their courts is to me the most formidable. All their other assumptions of ungiven powers have been in the detail. The bank law, the treaty doctrine, the sedition act, alien act, the undertaking to change the State laws of evidence in the State courts by certain parts of the stamp act, &c., have been solitary, unconsequential, timid things, in comparison with the audacious, bare-faced, and sweeping pretension to a system of law for the United States without the adoption of their Legislature, and so infinitely beyond their power to adopt. I am happy you have taken up the subject, and I have carefully perused and considered the notes you inclosed to me. * * *

I think it will be of great importance when you come to the proper point to portray at full length the consequences of the new doctrine that the common law is the law of the United States, and that their courts have, of course, jurisdiction coextensive with that law; that is to say, general over all cases and persons. But, great heavens! who could have conceived in 1789 that within ten years we should have to combat such wind-mills?

I have quoted from this letter of Jefferson's to show that the power to pass the alien and sedition laws was claimed under the common law of England, "as the universality of the impeaching power" is now claimed by those who hold that the Senate has jurisdiction in

this case, and to show that Jefferson thought there was great danger to the liberties of the people in such unfounded assumptions. Do you say there can be no abuse of this power? I answer that in high party times, when the passions of men are aroused, there is great danger.

Mr. Jefferson says, as before quoted:

I see nothing in the mode of proceeding by impeachment but the most formidable weapon for the purposes of dominant faction that ever was contrived.

If the power is confined to persons in office, the cases will be comparatively few, of a factious or partisan character; but if you take in the leaders of parties, who are seeking office, or laboring for the success of their party, the temptations to disqualify them become dangerous in the extreme.

Let us look at a few cases that might have arisen in our history, if the power of impeachment, as now claimed, had been supposed to exist.

Soon after Mr. Monroe became President hostilities broke out with the Creek and Seminole Indians, occupying a part of Georgia and Florida. As commander of the southern military district, General Jackson was ordered to take the field against the hostile tribes; and as many of the number took refuge in Florida, where they were believed to be countenanced if not aided by the Spaniards, the general deemed it his duty to enter Florida with his Army, and take possession of Saint Mark's and Pensacola. He also seized and had tried by court-martial, two Englishmen, Arbuthnot and Ambrister, who were charged with aiding and inciting the Indians in their depredations upon our people. They were both found guilty and hung.

These proceedings caused the President great anxiety. They were considered in cabinet council and condemned and disavowed by every member except Mr. Adams. A paper was drawn up and made public that in entering Florida General Jackson had acted without authority, and upon his own responsibility; and it was decided that the places taken should be immediately evacuated. This condemnation of General Jackson roused his fiery temper, and his friends took up his cause. The subject was brought before Congress by Mr. Cobb, a personal friend of Mr. Crawford, who introduced a resolution in the House of Representatives condemning General Jackson's proceedings, upon which a very acrimonious, irritating, and prolonged debate arose.

It was referred to the Committee on Military Affairs, a majority of whom made a report severely censuring General Jackson, while the minority reported that he deserved the thanks of the country. Upon a final vote the general's conduct was approved—100 to 70.

The papers communicated by the President on this subject to the Senate were referred to a committee of five. Three of this committee made a report severely condemning General Jackson's proceedings, while the minority justified them. No vote was taken on the report in the Senate.

The debates in Congress on this subject caused great animosity among members during the whole session. Now, suppose General Jackson had been impeached for his conduct under "the *universality of power*," as Mr. Madison calls it, what would have been the consequences? Dangerous in the extreme. Civil discord unprecedented would have been the result. Had he been disqualified from holding office, he would never have been President, unless he had reached that position through revolution, which would not have been unlikely.

When John Quincy Adams was elected President, Henry Clay, who favored him, was charged with bargain and corruption, a charge which his enemies persisted in making as long as he lived. He was the great and favorite leader of the whig party. Suppose that he had been impeached, convicted, and disqualified, what would have been the consequences? Discord, and possibly revolution. These were possible cases, if there had been the necessary majorities. Many others of less prominence might be cited.

We have in New Hampshire to-day a flagrant case, an ex-governor, not one year out of his seat, usurped authority and violated the constitution of the State, so as to change the political character of the State senate. He gave certificates to two men not elected, and stifled the votes of the people. His action led almost to revolution. He was censured severely by the house of representatives; but under this new doctrine of "universality of impeachment" he can now be impeached, and deservedly so, as far as his offense is concerned. But I counsel no such procedure. We have the necessary majority in each house to impeach and convict him, but the people have already condemned him, and I would not invoke this doubtful and dangerous power, as it would inflame party passions and disturb the peace of an orderly and law-abiding people.

We have recently had a civil war in this country. The proceeding of impeachment was not invoked to reach any of the leaders of the rebellion. If this "universality of power" had prevailed, some Senators on this floor, and I speak it with no disrespect, might have been disqualified from holding office, and a two-thirds vote of each House of Congress could not have relieved them.

This impeaching power might have been carried to a very great extent. The power as now claimed would have embraced all the officers who deserted from the Army and Navy of the United States, all the citizens who were officers in the confederate army, and all the soldiers who enlisted to fight against their country, for they had all committed treason. By the fourteenth amendment those who had taken an oath to support the Constitution of the United States, and aided the rebellion, were disqualified to hold any office; but by a special provision their disabilities might be removed, by a vote of two-thirds of each House of Congress.

Let us not seek for dangerous and doubtful powers in the Constitution, for the sole purpose of disqualifying private citizens from holding office; but if they have committed crimes, let us leave them to the courts, which can punish them to the full extent of the magnitude of their offenses, in their persons, property, and also disqualify them from ever holding office under the United States.

The courts can do more in the case of W. W. Belknap than the Senate can do, and therefore there is no danger that he will escape punishment. The statute authorizes the court to disqualify him from holding office, and also to impose fine and imprisonment.

I think there is danger in the exercise of this doubtful power. If the people of this country should ever fall upon turbulent and revolutionary times, and party passions be hammered to whitest heat, I do say, with Mr. Jefferson, that I see nothing in this kind of impeachment "but the most formidable weapon for the purposes of dominant faction that ever was contrived." "It would be the most effectual one for getting rid of any man considered dangerous to their views."

Would it be well to have in this country ten, fifteen, or one hundred powerful men, who have been leaders in their party, disqualified for life to hold office? Would they be good citizens, would their friends acquiesce in such judgment? We did not think so when we removed your disabilities, honored and respected Senators. [Referring to RANSOM, GORDON, and others whose disabilities have been removed.] No! Rather that every citizen should feel that this is his country, his flag; that its interests are his interests, its glory his glory; that its Constitution and laws protect him in his equal rights and privileges; that all together we may honor, love, and defend our country.

[Mr. CONKLING, Mr. LOGAN, Mr. KELLY, and Mr. STEVENSON also delivered opinions, which have not been furnished for publication.]

THURSDAY, *June* 1, 1876.

At one o'clock p. m. the managers on the part of the House of Representatives (with the exception of Mr. LAPHAM and Mr. HOAR) appeared and were conducted to the seats provided for them.

The respondent appeared with his counsel, Mr. Carpenter.

The PRESIDENT *pro tempore*. Pursuant to order, legislative and executive business will be suspended, and the Senate will proceed to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War. The Secretary will notify the House of Representatives that the Senate is ready to proceed in the trial, the managers being present.

The PRESIDENT *pro tempore*, (at one o'clock and ten minutes p. m.) The Sergeant-at-Arms will make proclamation.

The usual proclamation was made by the Sergeant-at-Arms.

The Secretary read the journal of the proceedings of the Senate sitting on Monday, May 29, for the trial of the impeachment of William W. Belknap.

The PRESIDENT *pro tempore*. The Senate is now ready to proceed with the trial. On the question of jurisdiction raised by the pleadings in this trial, it is ordered by the Senate sitting for the trial of the articles of impeachment preferred by the House of Representatives against William W. Belknap, late Secretary of War, that the demurrer of said William W. Belknap to the replication of the House of Representatives to the plea to the jurisdiction filed by said Belknap be, and the same hereby is, overruled; and, it being the opinion of the Senate that said plea is insufficient in law and that said articles of impeachment are sufficient in law, it is therefore further ordered and adjudged that said plea be, and the same hereby is, overruled and held for naught. The Secretary will make the proper entry upon the journal.

Mr. WHYTE. Mr. President, I offer the order which I send to the Chair.

The PRESIDENT *pro tempore*. The Secretary will read the order proposed.

The Chief Clerk read as follows:

Ordered, That W. W. Belknap is hereby ordered to plead further or answer the articles of impeachment within ten days from this date.

Mr. CARPENTER. Mr. President and Senators: This court gave us two days to prepare for the argument of the question of jurisdiction, the decision of which occupied the court for about three weeks. I am certain that our argument did not perplex the court more than the decision of the court has perplexed us. And under the circumstances I trust the court will give us some time for reflection. The order offered by the Senator from Maryland is peremptory—

Ordered, That W. W. Belknap is hereby ordered to plead *further* or answer the articles of impeachment within ten days from this date.

This order assumes that Mr. Belknap is compellable to answer further. Whether this be so or not deserves examination. By the old common law an issue of fact found upon a plain abatement was final in cases of misdemeanors. Whether this was so where the issue joined was one of law merits examination.

One of my associates, Mr. Blair, is necessarily out of town. The other, Judge Black, is confined to his room by illness. And before determining what steps should next be taken on the part of the respondent, I desire a consultation with my associates.

By way of showing the necessity for such consultation let me refer to some of the questions which arise at the present time.

The defendant first pleaded to the jurisdiction of this court. The managers filed a replication, to which the respondent demurred; and the managers joined in the demurrer.

The rule is that each pleading must answer the preceding one. The replication, if sufficient in law, was a valid answer to the plea. The validity of the replication in matter of law was put in issue by our demurrer. And had the court upon the demurrer held the replication bad, then the court would have looked back to the plea itself to see whether or not it was sufficient in law; and if it had found the plea to be bad, then the court would have held in favor of the prosecution; upon the principle that a bad replication is as good as the bad plea to which it is a response. But in this case the court overruled our demurrer to the replication, thus holding the replication a sufficient answer to the plea. Was there therefore any necessity for the court to go back through the record and pass upon the sufficiency of prior pleadings? The plea to the jurisdiction having been answered by a replication which the court held good by overruling our demurrer to it, what was the necessity for the court to go back through the record? The only question raised by the plea was the jurisdiction of this court over the respondent; and whether or not the prosecution was entitled to a final judgment, or whether the judgment should be *respondeat ouster*, is a question to be examined.

But I submit with great confidence that the question of sufficiency in law of the articles of impeachment was not before the court; and that after judgment upon the question of jurisdiction, of *respondeat ouster*, the respondent was at liberty to begin his defense, as he might have done without questioning the jurisdiction.

In case on indictment, when the defendant challenges the jurisdiction of the court, and fails to make good his objection, he is remitted to every privilege he would have possessed if he had commenced his defense with questioning the jurisdiction; that is, he may move to quash, or he may plead in bar, or plead the general issue.

If I were compelled alone to take the responsibility in this case I should plead no further, but leave the managers to their own course; and in that case would not the managers be entitled to move for final judgment? This would be so, I think, had the issue been one of fact only. But here there was an issue of law and several issues of fact, all of which the court has disposed of by the order just entered.

We have appeared and pleaded, and if the court have held our defense insufficient, may we not stand upon it, without filing further pleadings? My impression is that the next step to be taken is for the managers to move for judgment, after which we could move for leave to plead further, which I have no doubt the court would grant.

All this, of course, is upon the supposition that the court has overruled the plea to the jurisdiction. The order declaring the jurisdiction was not concurred in by two-thirds of the Senators present. That is less than two-thirds of the Senate think there is jurisdiction to convict the respondent.

Manifestly a court which has not jurisdiction to convict has no jurisdiction to try the respondent; and such pretended trial would be wholly extrajudicial. No witness could be indicted for false swearing at such trial, nor punished for contempt for not obeying a subpœna.

It therefore becomes a very important question to be settled by the respondent's counsel, whether *any*, and if *any* what, further steps should be taken on the part of the respondent. An order has been entered in the record, as *an order of the court*, overruling the plea to the jurisdiction. But the journal of the proceedings shows that thirty-five Senators concurred in the order, and twenty-two dissented.

Speaking for myself only, (not having consulted with my colleagues,) I maintain that upon the whole record the order is void, for the reason that it was not concurred in by two-thirds of the Senators present and voting. Suppose a case in the Supreme Court, where only a majority of the judges need concur in the judgment; and suppose the record to show that only four judges concurred in the judgment while five dissented, but the minority directed the clerk to enter the judgment or order as the act of the court and he should do so and certify it as such under the seal of the court. It is manifest, I think, that such judgment, if the dissent of the majority appeared of record, would be absolutely void; and would be so declared by any court where the judgment should come in question collaterally. I think this judgment is in the same category.

But whether it is better for the respondent to move to vacate the order for this reason, or demur to the articles, and if the demurrer shall be overruled go through the form of a trial and give to the country the evidence on his behalf, is a question so important to the respondent that I do not wish to determine it without consultation with my colleagues. If this was the trial of an ordinary cause, I should have no hesitation. I should stop here. And if I was on trial myself, *in this cause*, I should stop here, confident that no Senator would vote for my conviction who believed that the court had no jurisdiction.

Now the question whether we shall plead further is one as to which I wish opportunity to consult with my colleagues; and I hope no order will be passed to-day which will preclude us from taking such course as, on consultation, we may deem advisable.

The question of the sufficiency in law of the articles themselves has not been raised by a demurrer thereto, has not been argued by either side, nor submitted to the court. The only question raised, argued, or submitted was the question of jurisdiction of the defendant; that is, whether the court had power to pass upon the sufficiency of the articles, or take any other step whatever in the cause. Had the court affirmed jurisdiction, (as I claim it has not,) then we could have moved to quash the articles, or demurred to them, or joined issue for trial. I do not hesitate to affirm that none of these articles, with possibly one exception, state the necessary facts to constitute a good indictment. Mere rhetoric and denunciation will not do. It is not enough to say that the defendant has been guilty of high crimes and misdemeanors; but the articles must state every fact which is an element of crime. And although the same strictness of pleading has not been required in cases of impeachment as in ordinary criminal causes, yet every fact relied upon to constitute the crime must be stated; and on the trial the proof cannot go beyond the averments of the articles. In the several impeachment trials in this country defendants have not resorted to formal pleadings. In Blount's case his response was more like an answer to a bill in chancery than a pleading in a criminal cause. It was a plea to the jurisdiction, a demurrer, and answer, all in one.

But I assume that where the respondent chooses to avail himself of formal and particular pleading, which the experience of a thousand years has shown to be essential to the protection of innocence, this court will not deny the right, at least without a hearing.

I, therefore, assume that the court, on its attention being called to the very sweeping terms of this order, will of its own motion vacate so much of it as holds that the articles of impeachment are sufficient in law.

The sufficiency in law of the articles is as material to the conviction of the respondent as is the truth in point of fact of the matters therein charged. Before there can be a conviction several things must be established.

First. That the defendant, in fact, has done, or omitted to do, certain things;

Second. That the things he has done or omitted constitute a crime;

Third. And not merely a crime, but a *high* crime or misdemeanor, meriting impeachment; and

Fourth. That the respondent is subject to impeachment, and this court has jurisdiction over him for the hearing and determination of this cause.

If any one of these elements be wanting, there can be no conviction. And of course, as soon as any one of these propositions is established in favor of the respondent, he is entitled to an acquittal. I think the point as to jurisdiction has been determined in his favor, inasmuch as more than one-third of the Senate has declared against jurisdiction. But what course we ought to take as a matter of expediency; whether we should move to vacate the order altogether and that the respondent be dismissed; or demur to the articles; and if demurrer is overruled, answer to the merits and go to trial, should only be determined after consultation of the respondent's counsel.

I repeat, if acting for myself, I should take no further step, but abide final judgment. Every judgment implies a declaration that the court has jurisdiction to render it. In cases of impeachment, when a Senator rises and votes guilty he thereby affirms the jurisdiction of the court to pronounce final judgment; the commission by the respondent of acts constituting a crime, and a high crime; and the regularity of all prior proceedings in the cause. No Senator can vote guilty, unless he believes there is not only guilt but jurisdiction to try and punish. I have mentioned these propositions not to argue them but to show that they arise fairly at this time, and are of such importance as to justify us in asking a reasonable time to consider them, before we are compelled to act.

Mr. Manager LORD. Mr. President and Senators, one question which the learned counsel has discussed before you the managers do not feel authorized to discuss while the order of this Senate remains. By its order the demurrer to the replication of the House of Representatives is overruled, the plea of the defendant is overruled and held for naught, and the articles of impeachment are held sufficient. Now, apprehending that this order has been made upon due consideration, that the Senators understood all these pleadings and made this order in that view, we do not feel called upon, I repeat, to discuss the questions pertaining thereto until some motion is made to change the order; and if such a motion should be made, if the Senate, after this deliberation and after this carefully prepared order, takes into consideration the question whether it will change its order, then the managers will desire to be heard.

On the point which the counsel has suggested, practically, that a two-thirds vote is necessary on the question of jurisdiction, that Senators who voted that this court had not jurisdiction must therefore on the final vote, when the question is put, "Did this defendant take $1,500 on a given occasion and for such a purpose?" say "Not guilty," because of their views in regard to jurisdiction—on this point I say we shall be prepared to show that there is nothing whatever in the suggestion; in fact, that the whole practice of courts of impeachment

has been in contravention of it; that the Constitution itself prevents any such possibility. Therefore when this question is raised in some proper form we shall desire to be heard upon it.

The counsel makes another suggestion, that if he stops here the managers would be compelled to move, or could move for judgment. This is not according to the rule of the Senate. The rule of the Senate provides exactly the contrary; that this point may be in the minds of Senators who have not recently looked at the rule, I will read a portion of it:

If the accused, after service, shall fail to appear, either in person or by attorney, on the day so fixed therefor as aforesaid, or, appearing, shall fail to file his answer to such articles of impeachment, the trial shall proceed, nevertheless, as upon a plea of not guilty.

Mr. CARPENTER. Pardon the interruption; but that is where there is no pleading on the part of the defendant.

Mr. Manager LORD. There is now no pleading on the part of the defendant; by the order of the Senate not only is his demurrer to the replication overruled, but his plea that he puts in to the articles is effectually held for naught. It stands therefore precisely as if no plea were in at all. Under the order of the Senate there is nothing before this tribunal now excepting the articles of impeachment; therefore there is no answer, actual or constructive. The defendant appears in person and by counsel; as there is no answer in this case before the Senate, all that the managers can do, at the proper time, is to move to proceed with the trial "as upon the plea of not guilty."

One other suggestion. We apprehend that the true object of all trials, civil or criminal, is to reach the merits at the earliest moment. The defendant here stands accused by impeachment, having been a high officer of the Government, of certain crimes and misdemeanors. He has put in one dilatory plea, and that has occupied all this time. He now proposes, after this Senate has so deliberately entered this order, after it, having examined all the pleadings, has found these articles of impeachment sufficient, to try again in that direction; he proposes to demur to the articles of impeachment; and while I cannot, perhaps, strictly call a demurrer a plea, yet, in a broader sense, it is. The defendant proposes another dilatory proceeding; I may call it properly another dilatory plea. And how many shall he have? It is absolutely in the discretion of the Senate whether to give him this privilege or not. It is in the discretion of any court of civil or criminal jurisdiction, unless controlled by statutory law.

This defendant accused of these high crimes, after having by his dilatory plea occupied weeks of time, seeks further delay; after this court, under rules which are broader and more liberal than in other courts in regard to pleadings, has deliberately overruled his demurrer, deliberately held his plea for naught, and that the only pleading before this tribunal is the pleading called the "articles of impeachment," and after this court has solemnly adjudged that these articles are sufficient, the defendant by his learned counsel asks you to go back into the courts of law, for rules not binding even there; he wants you to adopt the rules which he says are held in criminal courts, and give him the right, under all the circumstances of this case, to put in this further dilatory plea, because he says what? That he could go into a criminal court and take up these articles of impeachment, and one by one satisfy the tribunal that the pleading would not be good as an indictment. What if he could, and what if the technical rule availed here? It nevertheless is in the discretion of this court whether it will allow him again to stand on a technical point instead of proceeding to the merits. I apprehend it is an application which will not be favored by the Senate. I apprehend this Senate sitting as a court of impeachment will hardly take the position, after this deliberate order, that it will open the whole case again, and for what? Not from a sense of justice to the defendant; not for the purpose of ascertaining the truth; but simply that learned counsel skilled in the criminal courts may stand in this august tribunal and urge that these articles of impeachment have not all the words and phraseology which he thinks would be necessary in a court of criminal jurisdiction to maintain an indictment.

I will not now discuss the question whether the articles of impeachment are sufficient. The counsel himself has confessed the rule that pleadings in this court are entirely distinct and separate as to mere technical rules from pleadings in ordinary criminal proceedings. This court has a broader range; it has an easier path in its high jurisdiction to reach the merits, and therefore I may say, with all respect to this tribunal, that it would be a most extraordinary proceeding, in the judgment of the managers, for this court, without claim of any possible injustice to the defendant, to open this case for another dilatory plea instead of requiring him to go to trial upon the merits.

My colleague, Mr. McMAHON, desires to make a statement.

Mr. Manager McMAHON. Before the counsel resumes his argument, I desire to call his attention to the fact that he has himself invited the decision of the Senate as it has been made. In his argument, to be found on page 64 of the RECORD, I find the following:

I shall endeavor to maintain the following propositions:
1. That articles of impeachment cannot be entertained against a private citizen in any case whatever;
2. That wherever articles of impeachment are exhibited, they must set forth every fact essential to constitute a high crime or misdemeanor, and every fact necessary to bring the case within the jurisdiction of the court; and
3. That the issues of facts arising upon the plea in abatement are immaterial.

After proceeding to discuss these questions, in finally summing up the case I find on page 71 that the gentleman uses the following language:

And I think it would have been safe for us to demur to the articles; but not wishing to take risks upon a technical construction, we thought it safer to plead affirmatively the fact that the respondent was not holding any office at the time of impeachment. Undoubtedly, to any plea of the respondent in confession and avoidance of the articles, the prosecution might have replied in confession and avoidance; but not so to a plea which in substance is a denial of any fact which should have been stated in the articles to show jurisdiction. If the articles themselves are deficient in not stating any fact necessary to entire jurisdiction, jurisdiction of the offense and the offender, then this court never acquired jurisdiction.

It results from the fact that this court has only a special jurisdiction, that the first pleading must show a case within jurisdiction.

I think that after having invited the court to that particular question and to the discussion not simply of the fact, it is fair to presume that the Senate considered the facts which bear upon the question of jurisdiction, and also the facts which bear upon the character of the crime therein alleged.

Mr. CARPENTER. Mr. President——

Mr. THURMAN. I should like to know what is to be the rule of the Senate in regard to the discussion of each matter. The Senator from Maryland [Mr. WHYTE] has offered an order——

The PRESIDENT *pro tempore*. The Chair will remind the Senator that debate is not in order.

Mr. THURMAN. I do not wish to debate, but I want to know the rule of the Senate on this subject. I want to know whether there is to be an unlimited discussion of counsel and managers on every order that is offered by a Senator. In my judgment it is all irregular.

The PRESIDENT *pro tempore*. The Chair will——

Mr. CARPENTER. If the court will hear me a moment on that point——

The PRESIDENT *pro tempore*. The Chair will state in reply to the Senator from Ohio that the Chair was holding under the rule that each of the parties is entitled to one hour's debate on any motion or order submitted.

Mr. THURMAN. What! Upon an order offered by a Senator?

The PRESIDENT *pro tempore*. The right of discussion is given to the parties.

Mr. THURMAN. There is no order offered by the parties.

Mr. CARPENTER. Mr. President, can I proceed?

The PRESIDENT *pro tempore*. The counsel will proceed.

Mr. CARPENTER. Mr. President and Senators, this is the second time that I have been reproached in this case with being a "criminal lawyer." By this epithet I suppose the managers mean to accuse me of more or less familiarity with the rules and practice which the judicial courts, after centuries of experience, have established for the protection of the innocent, and the separation of truth from falsehood, in the administration of criminal justice. This I accept as a compliment, though probably not so intended. The defending of persons accused of crime (always entitled under our law to the presumption that they are innocent until proved to be guilty) cannot be considered discreditable to any member of the profession, when we know from history that from Socrates down, through all the ages, excellent and upright men have been falsely convicted, because they had not advocates versed in the law and familiar with the principles and rules of evidence, and of the requisite nerve and force to stand up against popular prejudice and clamor, or judicial corruption and tyranny, and establish before the world their innocence. I understand the managers to disclaim being criminal lawyers; and I might retort that no one should be permitted to prosecute a citizen in a criminal court who is not familiar with and *obedient* to the rules and practice of such courts.

The honorable manager [Mr. LORD] claims that this court is exempt from adherence to rules of pleading and the methods of judicial tribunals; and that, in reaching its conclusions, it may proceed with the freedom of the wind, "which bloweth where it listeth." So is a mob on the Rocky Mountains, administering Lynch law upon a supposed murderer; and the mob could as fairly pretend to be exercising judicial power, as could this august tribunal while denying the principles and overstepping the limits of the law.

The manager who last spoke has referred to my remarks on a former occasion, to show that I intended to submit the sufficiency in law of the articles of impeachment,—a subject which I did not at all discuss. If by saying that the articles must be sufficient in law to sustain a conviction, I submitted the question of their sufficiency to the court at that time, then by saying that not only must the articles be sufficient in law, but must be proved true in fact, I submitted the question of the guilt or innocence of the respondent at the same time. If what I said authorized the court to pass upon the sufficiency of the articles,—a question not argued on either side,—then the court might as well have passed upon the question of guilt or innocence at the same time. I was discussing nothing but the question of jurisdiction. It is true I did say that, inasmuch as the articles described the respondent as *late* Secretary of War, perhaps we might safely have demurred to them; but, for reasons which I stated, we thought it safer to plead affirmatively the fact that the respondent was not holding any office when he was impeached. The manager says the articles of impeachment were before the court. I deny that the question of their legal sufficiency was before the court on the argument of the single question whether the court had jurisdiction to pass upon their sufficiency. It was claimed by one of the managers on that

argument, if I remember aright, that the truth of the articles must be assumed, for the purposes of that argument. In other words, the question was, whether, conceding everything stated in the articles, the court had jurisdiction to try the respondent.

The question raised by our pleadings,—and submitted by our argument,—was, not whether the articles were true, or in point of form and substance, sufficient to show an impeachable crime,—but whether the respondent could be impeached after he was out of office. The truth and sufficiency of our plea was conceded by the managers when they filed a replication. To their replication we demurred. That undoubtedly submitted to the court the sufficiency of the plea as well as the replication. And if the court had held the replication bad, then, going back, they might have held the plea bad. But if the court, as appears by the order entered, held the replication good, by overruling our demurrer to it, then it was wholly immaterial whether the plea was good or bad, because it was disposed of by a good replication. As I understand the rule, it is only in case the party demurring is entitled to judgment on the particular point raised by his demurrer, that the court look back to see whether his former pleadings have been defective.

Suppose an indictment in a criminal court, and the defendant at the trial to plead to the array of the petit jury. This might lead to a succession of pleadings terminating in a demurrer. Would this demurrer raise the question of the sufficiency in law of the indictment, and the pleas in bar by the defendant, which had not been demurred to? Undoubtedly such demurrer would raise the question of the sufficiency of all the pleadings relating to the particular subject—the qualifications of that jury. So, in this case, the demurrer compelled the court to inspect all the pleadings touching the question of the jurisdiction of the court; and nothing else. And this question settled in favor of jurisdiction, the respondent should be permitted to commence his defense as he would have done if the jurisdiction had not been disputed.

Mr. THURMAN. I wish to submit a question for counsel to answer.

The PRESIDENT *pro tempore*. The question will be read.

The Chief Clerk read as follows:

As upon a demurrer the court must go back to the first defect, how could the court overrule the demurrer without deciding that the articles are sufficient?

Mr. CARPENTER. The first defect was the demurrer to a good replication; the court held the replication good by overruling the demurrer to it. If the replication was held good, of course it disposed of the plea, and ended the question of jurisdiction.

Now, if the court please, I do not wish to spend time unnecessarily. I know the Senate is pressed with legislative business. Knowing such *would be* the case, we moved a continuance to the next session of the Senate. But the court unanimously denied this motion, thus ordering the trial to proceed. We are therefore not responsible for the embarrassment which this trial must necessarily cause to legislative business. And I assume that no Senator will wish to deny us the privileges necessary to a proper defense, and the time necessary for preparation, but will accord us a full and patient hearing upon every question involved in this case; especially as most of the questions are now presented for the first time, and by their determination precedents will be made for all time, binding upon all men.

And now I ask that you will give us until Monday next to determine, as counsel, what step ought next to be taken on behalf of the respondent;—determine whether we will move to vacate the order just entered, upon the ground that it was not passed with the concurrence of two-thirds of the Senators present; or whether we will demur, and if the demurrer shall be overruled, answer, and go to final hearing and raise there all the questions which enter into a final judgment. That we can raise these questions on a final hearing, is clear, because it cannot be maintained that any question upon which conviction depends can be eliminated from such final determination by the action of less than the constitutional majority of two-thirds. Otherwise a *mere* majority of the Senate might defeat the constitutional provision.

In these cases of impeachment, if a mere majority can settle the question of jurisdiction, so a mere majority, by overruling a demurrer to the articles, can determine that the acts alleged to have been done or omitted by the respondent constitute in law a high crime or misdemeanor within the meaning of the Constitution; leaving the final judgment to rest only upon questions of fact or at the final hearing, none of these questions having been disposed of, some master tactician might first move a resolution declaring that the respondent had done or omitted the acts charged, and if sustained by a mere majority, might claim that the facts were settled, and that the final judgment must rest upon the question of law whether such facts amounted to a high crime or misdemeanor.

In briefer and plainer terms, no conviction can take place under this provision of the Constitution, unless two-thirds of the Senators concur in regard to every element necessary to conviction, and first and conspicuous among these, must be the question of jurisdiction.

Mr. WRIGHT. Mr. President, I wish to inquire whether it would be in order now to move to adjourn to a day certain, or whether the order should be properly that when the Senate sitting as a court of impeachment adjourns, it be to a definite time?

The PRESIDENT *pro tempore*. It would be in order to move to adjourn to a certain time.

Mr. WRIGHT. I move then that the Senate sitting as a court of impeachment adjourn until Monday at one o'clock.

Several SENATORS. Say Tuesday.

Mr. KERNAN. If the Senator will withdraw that motion, I wish to suggest an amendment to the order proposed by the Senator from Maryland, [Mr. WHYTE.]

Mr. WRIGHT. I have no objection to hearing the order read, so that it may be considered the pending order.

Mr. KERNAN. I wish to suggest the proposition I send to the Chair as an amendment to the motion of the Senator from Maryland.

The PRESIDENT *pro tempore*. It will be read.

The Chief Clerk read as follows:

Resolved, That in default of an answer within ten days by the respondent to the articles of impeachment, the trial shall proceed as on a plea of not guilty.

Mr. WRIGHT. I now modify my motion so as to make it that the Senate sitting as a court of impeachment adjourn until Tuesday next at one o'clock.

Mr. CARPENTER. To avoid any misunderstanding, I simply ask whether the Senator offering the order just read means by the order to exclude our right to demur to the articles?

Mr. KERNAN. I had not that particularly in my mind.

Mr. CARPENTER. It is very important that we should understand what we are to do.

Mr. KERNAN. It can be amended if the Senate deem this proper. I suppose that where a plea is put in to the articles of impeachment and a replication made to it and a demurrer to the replication, it really does test the sufficiency of the first pleading in the articles. It is quite common in States where there is pleading under the ordinary common-law practice. There a plaintiff may have a bad declaration, and the defendant's attorney not choosing to demur and tell him where it is defective puts in a bad plea, and the plaintiff demurs to the plea. Uniformly the demurrer reaches back to the declaration. If that is bad, the court so adjudges.

I had no particular point in view. The Senate can modify the order so as to say "plead or demur." I merely offered it that we might make some progress. I supposed the present judgment did affirm the sufficiency of the articles of impeachment.

Mr. Manager LORD. Mr. President, may I call the attention of the Senate to one thing? We have had a large number of witnesses in attendance during this protracted period, and we deem it desirable if possible, in connection with the orders to be made to-day, that some time be fixed for the trial, so that we can let some of these witnesses who live within a reasonable distance go home and return again, and thereby, perhaps, save some considerable expense.

I will say, in addition, that if the trial should not happen to occur on that particular day nevertheless it would be saving a good deal of expense to the Government and be a great convenience to the witnesses if some day could be fixed when the trial should proceed after the answer on the questions of fact. If anything should occur to prevent that, of course that would not alter the propriety of making the order, because, as I understand now, the trial is to go on.

Mr. THURMAN. Mr. President, I arise only to express the hope that by unanimous consent these orders that have been offered will be considered in open Senate.

Mr. BOUTWELL. Mr. President——

Mr. THURMAN. I hope I shall not be interrupted.

Mr. BOUTWELL. I feel called upon to ask the Chair to enforce the rules of the Senate.

Mr. THURMAN. I should like to know why the rule is enforced against me and not enforced against anybody else.

The PRESIDENT *pro tempore*. The Chair hopes that is not a reflection on the Chair. The Chair called the attention of the Senator from Ohio to the fact that debate was not in order. The Senator from Ohio stated that he wished simply to make a statement. The Chair indulged him in that. The Senator from New York, in response to a question of one of the counsel, also made a statment, which the Chair supposed he was making, and allowed him to make, by the same common consent.

Mr. THURMAN. I rise now to ask unanimous consent that this discussion be in open Senate. Is that out of order to ask unanimous consent?

The PRESIDENT *pro tempore*. The Chair has not asked the Senate for unanimous consent.

Mr. THURMAN. No, but I was interrupted by the Senator from Massachusetts, who cut me off short when I was asking that unanimous consent might be given. I ask it because I have heard the decision of this Senate treated to-day with scant respect and the law with less, and I want the discussion in open Senate.

The PRESIDENT *pro tempore*. The Chair reminds Senators again that debate is not in order. The Senator from Massachusetts insists on the enforcement of the rule. The Senator from Iowa moves that the Senate sitting for the trial of the impeachment adjourn until Tuesday next at one o'clock.

Mr. SHERMAN. I desire to offer an amendment to that, which I will reduce to writing.

Mr. CONKLING. I would inquire whether a motion as to adjournment is amendable except as to the time to which the adjournment shall be?

Mr. SHERMAN. I think the Senator will not object to the form. I have now my amendment.

The amendment having been reduced to writing was read, as follows:

Ordered, That this court adjourn until Tuesday next, and in the mean time the defendant have leave to plead, answer, or demur herein.

Mr. CARPENTER. I hope the Senate will also give us leave, if we conclude to make the motion, to make a motion to vacate this order on the ground suggested. It is certainly as important a question as the one which was argued and not at all settled by the Senate.

Mr. SHERMAN. It strikes me that this gives ample privilege.

The PRESIDENT *pro tempore*. The Chair will state to the Senator from Ohio that debate is not in order. The Chair will also rule that the motion of the Senator from Iowa is a simple proposition for an adjournment, and that the proposition of the Senator from Ohio is not an amendment to the motion of the Senator from Iowa.

Mr. KERNAN. I will withdraw the proposition I submitted in favor of the one of the Senator from Ohio.

The PRESIDENT *pro tempore*. The Senator from New York withdraws his proposition. The question pending is on the motion of the Senator from Iowa, that the Senate sitting for the trial of the impeachment adjourn until next Tuesday at one o'clock p. m

Mr. SHERMAN. I ask the Senator from Iowa if he has any objection to my substitute?

Mr. WRIGHT. I think I have. I adhere to the proposition I have made, and ask for a vote on that simple proposition.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from Iowa, that the Senate sitting for the trial of the impeachment adjourn until Tuesday next at one o'clock p. m.

The motion was agreed to; and the Senate sitting for the trial of impeachment (at two o'clock and twenty minutes p. m.) adjourned to Tuesday next at one o'clock p. m.

TUESDAY, *June* 6, 1876.

The PRESIDENT *pro tempore*. The hour of one o'clock having arrived, legislative and executive business is suspended and the Senate proceeds to the consideration of articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War. The Sergeant-at-Arms will make proclamation.

The usual proclamation was made by the Sergeant-at-Arms.

The managers on the part of the House of Representatives (with the exception of Mr. KNOTT) appeared and were conducted to the seats provided for them.

The respondent appeared with his counsel, Messrs. Blair and Black.

The Secretary read the journal of the proceedings of the Senate sitting on Thursday, June 1, for the trial of the impeachment of William W. Belknap.

The PRESIDENT *pro tempore*. The Senate is now ready to proceed with the trial.

Mr. EDMUNDS. What is the pending question before the Senate, Mr. President?

The PRESIDENT *pro tempore*. The Secretary will report the pending order submitted by the Senator from Maryland, [Mr. WHYTE.]

The Chief Clerk read as follows:

Ordered, That W. W. Belknap is hereby ordered to plead further or answer the articles of impeachment within ten days from this date.

Mr. BLACK. Mr. President, I ask leave in the absence of one of the counsel to present a motion drawn up by him which he would have presented if he had been here. I ask that it be read.

The PRESIDENT *pro tempore*. The Secretary will report the motion submitted by the counsel.

The Chief Clerk read as follows:

Senate of the United States sitting as a court of impeachment.

THE UNITED STATES OF AMERICA }
vs. }
WILLIAM W. BELKNAP. }

Here in court comes the said William W. Belknap, and moves the court now here, to vacate the order entered of record in this cause setting aside and holding as naught the plea of him, said Belknap, by him first above in this cause pleaded, for the reason that said order was not passed with the concurrence of two-thirds of the Senators present and voting upon the question of adopting and passing said order, as appears by the record in this cause.

WILLIAM W. BELKNAP.
J. S. BLACK,
MONTGOMERY BLAIR,
MATT. H. CARPENTER,
Of Counsel.

The PRESIDENT *pro tempore*. The question is on the proposition submitted by the Senator from Maryland, that being first in order.

Mr. BLAIR. Mr. President, it occurs to me that our motion ought first to be put. That motion to abate, set aside, vacate the order of the Senate ought to be put as it supersedes, takes precedence—it certainly does so logically—of the other proposition. And while I am up I should like to say to the Senate that our colleague, Mr. Carpenter, by whom this pleading was drawn up, is now unable to attend in consequence of illness. He is not confined actually to his bed; but his physician instructed him this morning that he ought not to and could not safely leave his room; and we would ask, before the Senate proceeds to the consideration of this motion, a short indulgence for the purpose of bringing him here to assist in the argument.

I do not know that it would be improper to say that we have no idea of dilatory motions in this matter; nor do we seek to put in these motions for any such purpose. There seems to be an impression, communicated to the public through the newspapers, that we are seeking in some way to delay action. Certainly gentlemen who have the experience that we have in legal proceedings know very well that nothing is to be accomplished by that. We want a fair trial, and a fair trial only, and an opportunity to present the questions arising upon the case which are of the very greatest importance; and, therefore, we feel bound to make this motion and to ask that time be given for the hearing of it.

The PRESIDENT *pro tempore*. The attention of the Chair is called to the fact that the proposition of counsel is not in the form of an amendment. The proposition of the Senator from Maryland is a proposition by itself, and so is that submitted by counsel Therefore in priority of time the proposition of the Senator from Maryland must be submitted first.

Mr. SHERMAN. I move to amend the order of the Senator from Maryland by striking out the words "is hereby ordered" and inserting "have leave;" so as to read:

Ordered, That W. W. Belknap have leave to plead further or answer the articles of impeachment within ten days from this date.

The PRESIDENT *pro tempore*. The question is on the amendment proposed by the Senator from Ohio.

The amendment was agreed to.

The PRESIDENT *pro tempore*. The question recurs on the order submitted by the Senator from Maryland as amended.

Mr. BOUTWELL. Will the Chair have the motion of the counsel read?

The PRESIDENT *pro tempore*. The motion submmitted by the counsel will now be read.

The Clerk read the motion submitted by Mr. Blair.

Mr. Manager LORD. Mr. President, the managers beg leave to submit a resolution which I send to the desk.

The PRESIDENT *pro tempore*. A resolution is submitted on the part of the managers, which the Secretary will read.

The Chief Clerk read as follows:

Resolved, That in default of an answer to the merits within ten days by respondent to the articles of impeachment, the trial shall proceed as upon a plea of not guilty.

The PRESIDENT *pro tempore*. The question is on the order submitted by the Senator from Maryland as amended.

Mr. WHYTE. Mr. President——

The PRESIDENT *pro tempore*. Debate is not in order.

Mr. WHYTE. I do not rise to debate, but merely to make a suggestion. If the proposition made by the counsel——

Mr. CONKLING. The Senator is inaudible here.

Mr. WHYTE. I was about to say that if the counsel for the respondent and the managers desire to argue at this time the proposition submitted by the counsel, the order which I have offered can lie on the table for consideration afterward. There is no proposition by the counsel, as I understand, or the managers, to argue the suggestion that they have made for a vacation of the order. If they propose to argue it, I see no reason why the argument cannot go on at this time.

Mr. BLACK. We have made no proposition to argue it now.

Mr. WHYTE. Or at any time. There is no proposition of a time. It is leaving it unsettled.

Mr. BLACK. Any time that the Senate may fix we shall be ready to argue it.

Mr. THURMAN. Mr. President, it seems to me that the order suggested by the managers is an amendment to the resolution offered by the Senator from Maryland. I move it as an amendment to the order offered by the Senator from Maryland.

The PRESIDENT *pro tempore*. The Senator from Ohio will submit his proposition in writing.

Mr. THURMAN. It is the proposition on the table as submitted by the managers.

The PRESIDENT *pro tempore*. The Senator from Ohio will have to modify the proposition, changing it so as to be in the form of an amendment.

Mr. THURMAN. It is to add to the order "and that," &c.

Mr. SARGENT. I should like to hear both reported.

The CHIEF CLERK. The order is in the following words:

Ordered, That W. W. Belknap have leave to plead further or answer the articles of impeachment within ten days from this date.

The amendment is to add:

And that in default of an answer to the merits within ten days by respondent to the articles of impeachment, the trial shall proceed as upon a plea of not guilty.

Mr. Manager LORD. I present this in connection with the other——

The PRESIDENT *pro tempore*. The paper will be read.

The Chief Clerk read as follows:

Resolved, That on the 11th day of July, 1876, the Senate sitting as a court of impeachment will proceed to hear the evidence on the merits in the trial of this case.

Mr. LOGAN. I merely wish to call the attention of the managers to the rules of proceeding in trials of impeachment before the Senate in reference to the first order offered by them:

If the accused, after service, shall fail to appear, either in person or by attorney, on the day so fixed therefor as aforesaid, or, appearing, shall fail to file his answer to such articles of impeachment, the trial shall proceed, nevertheless, as upon a plea of not guilty.

The rule now is just as the manager has presented the order.

Mr. Manager LORD. Except that we fix the time.

Mr. LOGAN. No, the time is first ordered. I merely wish to call attention to the fact that the order is a mere reiteration of the rule of the Senate.

Mr. CHRISTIANCY. Mr. President, I wish to inquire of the Senator from Maryland, and also of the Senator from Ohio, if it is the intention by the adoption of these orders to preclude the defense from raising the question whether a simple majority or a majority of two-thirds is required to sustain the jurisdiction of this court; whether it is the intention to cut off the defense from raising that question and arguing it before the Senate?

Mr. THURMAN. Mr. President, that question can be argued on the motion submitted by the counsel for the respondent. I suppose it can be argued at almost any time or in any way. In my judgment it never can be decided until we come to the final decision, but it can be argued on the motion submitted; although I think it is pretty clear, for reasons that I am not at liberty to state now, that it cannot be decided on any such motion as that submitted by the counsel.

Mr. EDMUNDS. Mr. President, as debate is not in order, I refrain from saying anything except merely to remark by unanimous consent that I do not wish to be bound either by the question of the Senator from Michigan or the reply of the Senator from Ohio.

The PRESIDENT *pro tempore*. The question is on the amendment submitted by the Senator from Ohio to the order of the Senator from Maryland, which the Secretary will again report.

The CHIEF CLERK. It is proposed to insert at the end of the order:

And that in default of an answer to the merits within ten days by respondent to the articles of impeachment, the trial shall proceed as upon a plea of not guilty.

Mr. SHERMAN. I ask for the reading of the rule referred to by the Senator from Illinois. I have it not before me.

Mr. BLACK. Mr. President, is it in order for the counsel of the defendant to make a suggestion about these motions as they are going on?

The PRESIDENT *pro tempore*. It is. The counsel and managers on each side are entitled to one hour on any proposition for discussion.

Mr. BLACK. Then I do suggest that it is hardly necessary to provide a penalty for the default by anticipation. It will be time enough to determine what ought to be done after we have made the default. It is not necessary to anticipate it. The answer will most probably be in. The chances are a thousand to one that it will not be necessary to say what ought to be the consequences of a failure to put the answer in.

Mr. SHERMAN. I ask that the rule referred to be read.

The PRESIDENT *pro tempore*. The eighth rule will be read.

The Chief Clerk read as follows:

VIII. Upon the presentation of articles of impeachment and the organization of the Senate as hereinbefore provided, a writ of summons shall issue to the accused, reciting said articles, and notifying him to appear before the Senate upon a day and at a place to be fixed by the Senate and named in such writ, and file his answer to said articles of impeachment, and to stand to and abide the orders and judgments of the Senate thereon; which writ shall be served by such officer or person as shall be named in the precept thereof, such number of days prior to the day fixed for such appearance as shall be named in such precept, either by the delivery of an attested copy thereof to the person accused, or, if that cannot conveniently be done, by leaving such copy at the last known place of abode of such person, or at his usual place of business in some conspicuous place therein; or if such service shall be, in the judgment of the Senate, impracticable, notice to the accused to appear shall be given in such other manner, by publication or otherwise, as shall be deemed just; and if the writ aforesaid shall fail of service in the manner aforesaid, the proceedings shall not thereby abate, but further service may be made in such manner as the Senate shall direct. If the accused, after service, shall fail to appear, either in person or by attorney, on the day so fixed therefor as aforesaid, or, appearing, shall fail to file his answer to such articles of impeachment, the trial shall proceed, nevertheless, as upon a plea of not guilty. If a plea of guilty shall be entered, judgment may be entered thereon without further proceedings.

Mr. Manager LYNDE. Mr. President and Senators, I wish to call the attention of the Senate to the difference between the rule as it has now been read and the order which the managers have presented to the Senate for their adoption. The order which we propose is that the respondent shall answer on the merits. We have already been occupied for several weeks with dilatory pleadings. We have had a plea to the jurisdiction of the Senate. It has been suggested by the counsel for the respondent that they would yet demur, or ask leave of the Senate to demur, to the articles of impeachment. The managers believe that these dilatory pleadings have been indulged in by this Senate quite too long and without a precedent. I find no precedent either in England or in this country for dilatory pleadings on impeachment. In the first case tried under our Constitution against Senator Blount, it is true, the respondent filed a plea to the jurisdiction which is regarded as a dilatory pleading; but that was without authority and without precedent. There never had been a case in England where a plea of that kind had been allowed to be put into articles of impeachment, and it stands alone in this country.

The time which has already been occupied in this case must satisfy the Senate that it is not right that these dilatory pleadings should be introduced or allowed. In the case of Judge Barnard in New York, where the counsel for the respondent applied to the court for leave to file a demurrer or leave to move to quash certain articles of impeachment, the court refused the request and required the defendant to plead to the merits, stating that in the course of the trial of the case all those questions of law could be availed of by the parties and would be decided by the court.

Now, we think that if a precedent of this kind is established, if this Senate will go on and hear dilatory plea after dilatory plea, first a plea to the jurisdiction, a plea in abatement, then a demurrer to the form, there is no end; and when shall we arrive at a trial of this case upon the merits? If there was an officer of this Government now in office who endangered the liberties of the people, who was engaged in a conspiracy against the Government, and he stood impeached before the Senate, if these dilatory pleas were allowed, the evil to be apprehended from his action might be carried into effect and realized. And yet it is claimed that it is a matter of right by the respondent, on the other side, and the courts of impeachment of this country have by precedent at least, if not by direct vote, decided that when an officer of the Government is impeached he cannot be suspended from the functions of his office while the trial is progressing. No; it has been the aim and intention of the courts in all cases of impeachment that a speedy trial should be had, that the respondent should be required to answer to the merits, and then the court would consider the question, and the whole question, and protect and save the country.

Mr. BLAIR. Mr. President and Senators, it seems to me that this objection, if a good one at all, is taken too late. The only dilatory plea that has been filed or that is proposed to be filed was one to the jurisdiction; and my colleague says with very good reason that he does not admit that to be a dilatory plea. It is a plea that goes to the jurisdiction, to the fundamental legal capacity of the court to entertain the action, and it is a fundamental question, therefore, to be decided by the court and put in and accepted on all hands as a proper course. We were not given the time properly to argue that question. We had to rush into the discussion of it upon three days of preparation, and the delay that has taken place since has not been at the instance or the desire of the defendant here. We were not permitted to argue the question as it ought to have been argued. We were forced into its discussion without the adequate or proper preparation which counsel on a great case like this ought to have been permitted to make. It is true there has been a decision of this court upon a question that goes to its jurisdiction. If we had made that question under the plea of not guilty, and the court had decided it with the whole case before it, and there had been a difference on that point such as now appears in the decision of the court, no lawyer would claim that a final judgment could be rendered upon the case. All we ask now is to be heard upon that question. The gentlemen on the other side seem to be anxious to save the time of the Senate. We are anxious to save the time of the Senate, and we propose to do it by the discussion of the question to know whether the judgment that is now of record can stand consistently with legal principle.

While I am up I will say that the honorable Senator from Maryland does not propose to cut off a decision by this court upon our proposition to be heard. He stated in the hearing of the Senate that he was willing to let his proposition lie until the Senators could have a vote and ascertain if we would fix a time. We say to-morrow. We should be ready to-day if our colleague were here and able to come. To-morrow or the next day we shall be ready to proceed with the argument upon the question of the validity of the judgment which has been rendered; and I do hope that this court will allow an argument to be presented upon that fundamental question, and will not take snap judgment, because that is the proposition, to take snap judgment and say, "We will not hear you upon this question," on which we have had no exception taken up to this hour, and when we are not in default at all and have not consumed the time of this court by any attempt at dilatory motions.

Mr. BLACK. I should like to learn from the honorable manager who spoke what his proposition is. Does he intend to have the Senate throw out altogether the motion that we made, and refuse to hear it?

Mr. Manager LYNDE. It was not upon your motion, but upon the order introduced by the Senator from Maryland, and the amendment offered by the Senator from Ohio, that the respondent be required to answer upon the merits within ten days, and in default of such an answer, that then the case proceed as upon a plea of "not guilty." We have no possible objection to the Senate indulging the counsel in any argument they may see fit upon any question that may properly arise in the case, but we wish to get at an issue in this case so as not to consume the Senate's time and ours.

Mr. BLACK. I understand that there is no objection at all to our arguing this question whenever the Senate see proper to hear it?

Mr. Manager LYNDE. None.

Mr. BLACK. Well, I will say now that, so far as I can see, the statement of the law upon this point as made by the Senator from Ohio [Mr. THURMAN] is what meets with my view. I have not had time to consult with the other counsel in the case and do not know how they feel about it; but I think, whatever may be done with this motion or whenever it may be argued, it cannot really be directly decided until the final determination of the case, and that we ought to have, therefore, the privilege of arguing the point at any time. It is a question that arises and will arise at every step of this case as we go on. We have, I should think, a perfect right after putting in an answer to the articles of impeachment to object to any evidence that the managers may offer on the ground that it is all *coram non judice;* that the decision of the Senate on what we have been in the habit of call-

ing the question of jurisdiction is in favor of the defendant, (there being but a bare majority,) and not against him.

At the same time, however, it seems to me that that is a chain of the question, which, for the convenience of the Senate and of all parties, ought to be settled at once; because, if it be the judgment of the Senate that they have no jurisdiction and that is placed upon the record as the judgment of the Senate, then that stops the proceeding, and it is not necessary to go any further. Everything that we do beyond that is labor lost, if it should be finally determined that the jurisdiction does not exist. We say it is determined already; that the question whether he was a public officer, and therefore within the power of the House to impeach him, is settled in his favor; that unless a majority of two-thirds have voted against him on the proposition it is lost; that it requires a vote of two-thirds to express the judgment of the Senate as a collective body; and that a vote of less than two-thirds is like a vote of one-half of a jury. It establishes nothing except the acquittal of the party accused.

Mr. Manager LAPHAM. Mr. President, I desire that this question shall be fully understood by the Senators before the vote is taken. A reference has been made to the rule adopted by the Senate applicable to impeachment trials. That rule is general in its terms. It provides what shall be the result of the defendant's failing to appear and what shall be the consequence if he appear and fail to answer. We have passed that stage in this case. The defendant has been summoned, he has appeared and pleaded; and the Senate have given a judgment upon his plea. Now, all we desire is to have an operative order in this case as to what shall be the future course of pleading; nothing more, nothing less. That is all that is to be attained by the resolution or order proposed by the Senator from Maryland and the amendment proposed by the Senator from Ohio.

I agree with the learned counsel for the defense that, if it be necessary to retain jurisdiction and necessary that two-thirds of the Senate should vote that they have it, that question is available to them at any stage of this case, after the close of the evidence if you please. It is not necessary that they should present it here by a motion. We have no desire to cut off the consideration of that question. We are prepared to meet that question, to meet it upon principle and upon authority; but we want at this stage of the case an order of this court which will place the defendant in a position where, if he fail to put in an answer upon the merits, this case may, nevertheless, proceed as upon the plea of "not guilty."

The PRESIDENT *pro tempore*. If no more is to be said, the Chair will put the question on the amendment proposed by the Senator from Ohio [Mr. THURMAN] to the proposed order of the Senator from Maryland. [Mr. WHYTE.]

Mr. WHYTE. In order to test the sense of the Senate on the subject of hearing argument, I offer the order which I send to the Chair.

The PRESIDENT *pro tempore*. The proposed order will be read for information.

The Chief Clerk read as follows:

Ordered, That the Senate sitting as a court of impeachment adjourn until to-morrow at one o'clock p. m., when argument shall be heard upon the motion offered by the counsel for the respondent.

The PRESIDENT *pro tempore*. As this order pertains to adjournment, the Chair will put the question first upon it.

Mr. LOGAN. Before the question is put, I think the convenience of the managers and of the counsel for the defense ought to be consulted in reference to these motions as to time. I do not know but what it would be perfectly convenient for them should we adopt this order, but I think their convenience ought to be ascertained. If the court is going to have the management of this case as far as time is concerned, I think we had better retire and consult as to what kind of an order we shall make. I would rather that such an order should come from the managers or the counsel upon the other side, so that they may agree as to time and accommodate themselves to the convenience of each other.

The PRESIDENT *pro tempore*. The Chair will state before any other Senator rises that it is out of order to debate questions, and the Chair is compelled to enforce the rule lest reflection be made upon the Chair, and he will enforce the rule unless Senators prefer by common consent to indulge in debate.

Mr. EDMUNDS. I submit a point of order.

The PRESIDENT *pro tempore*. The Senator will state his point of order.

Mr. EDMUNDS. I submit that the question must still be taken on the amendment proposed by the Senator from Ohio, inasmuch as the order offered by the Senator from Maryland is something more than a mere adjournment, and is an order for an argument.

The PRESIDENT *pro tempore*. The Chair has ruled that, as the order includes adjournment, he will put the question on the proposition of adjournment submitted by the Senator from Maryland.

Mr. CONKLING. The rule, I believe, permits a question to be asked. I should like to inquire in some form—I did not hear the statement—what was the statement made touching the illness or absence of one of the counsel for the respondent. I was called from the Chamber for a moment and have heard nothing in respect to it.

Mr. BLAIR. I will state that Mr. Carpenter, by whom this proposition was written, was very ill yesterday and is still ill, and that his physician, in my presence, to-day told him that it would be improper for him to leave the house, but he said that he hoped to be ready by to-morrow. I would rather have it laid over to the next day, but he said he could come, he thought, by to-morrow if the Senate was so urgent about it.

The PRESIDENT *pro tempore*. The Secretary will report the order submitted by the Senator from Maryland respecting adjournment.

The Chief Clerk read as follows:

Ordered, That the Senate sitting as a court of impeachment adjourn until to-morrow at one o'clock p. m., when argument shall be heard upon the motion offered by the counsel for the respondent.

Mr. EDMUNDS. Let us have the yeas and nays upon that.

The yeas and nays being taken, resulted—yeas 18, nays 23; as follows:

YEAS—Messrs. Allison, Bruce, Burnside, Caperton, Christiancy, Clayton, Dennis, Dorsey, Ferry, Hitchcock, Jones of Florida, McCreery, Ransom, Robertson, Sargent, Whyte, Windom, and Wright—18.

NAYS—Messrs. Bayard, Bogy, Cockrell, Cooper, Eaton, Edmunds, Goldthwaite, Gordon, Hamilton, Johnston, Kelly, Key, Logan, Maxey, Mitchell, Morrill of Vermont, Morton, Norwood, Sherman, Stevenson, Thurman, Wadleigh, and Withers—23.

NOT VOTING—Messrs. Alcorn, Anthony, Barnum, Booth, Boutwell, Cameron of Pennsylvania, Cameron of Wisconsin, Conkling, Conover, Cragin, Davis, Dawes, Frelinghuysen, Hamlin, Harvey, Howe, Ingalls, Jones of Nevada, Kernan, McDonald, McMillan, Merrimon, Morrill of Maine, Oglesby, Paddock, Patterson, Randolph, Saulsbury, Sharon, Spencer, Wallace, and West—32.

The PRESIDENT *pro tempore*. The Senate denies the order. The question is on the amendment submitted by the Senator from Ohio [Mr. THURMAN] to the proposition of the Senator from Maryland, [Mr. WHYTE.] The Secretary will report both in their order.

The CHIEF CLERK. The proposed order is in the following words:

Ordered, That W. W. Belknap have leave to plead further or answer the articles of impeachment within ten days from this date.

It is proposed to amend that by adding thereto:

And that in default of an answer to the merits within ten days by respondent to the articles of impeachment, the trial shall proceed as upon a plea of not guilty.

The PRESIDENT *pro tempore*. The question is on the amendment. The roll-call will proceed.

Mr. WRIGHT. I wish to suggest to the Senator from Ohio that the order as drafted by the managers is evidently upon the theory that the plea of "not guilty" should be entered if there was no answer. The first part of the order refers to an answer or further plea. I suggest whether the amendent as offered should not include what is included in the first part of the order.

Mr. THURMAN. A plea may be a plea to the merits or it may be a dilatory plea.

Mr. WRIGHT. The language in one case——

The PRESIDENT *pro tempore*. The Chair will remind Senators that debate is not in order.

Mr. WRIGHT. I am not debating the question, but merely suggesting whether there should not be an amendment to the amendment.

The PRESIDENT *pro tempore*. It is difficult for the Chair to define debate.

Mr. WRIGHT. Will the Secretary be kind enough to read the order again?

The PRESIDENT *pro tempore*. The Secretary will report the order again.

The CHIEF CLERK. The order reads as follows:

Ordered, That W. W. Belknap have leave to plead further or answer the articles of impeachment within ten days from this date.

To that it is proposed to add the following words:

And that in default of an answer to the merits within ten days by respondent to the articles of impeachment, the trial shall proceed as upon a plea of not guilty.

The PRESIDENT *pro tempore*. The question is on the amendment just reported.

Mr. BLACK. Is it now in order for me to make a remark to the Senate?

The PRESIDENT *pro tempore*. It is.

Mr. BLACK. I wish to say that, while we do not see any special necessity for the amendment, we have no objection to it, because that is the right thing to be done in case we make the default for which that is provided as a penalty; but the resolution being so amended we can have no objection to it. That is, we think that we are perfectly content that that time should be fixed for putting in the answer.

Mr. BLAIR. Mr. President, the amendment offered, as I heard it read the last time, seems to be inconsistent with the original order. The amendment offered by the managers, in its phraseology, implies an answer and necessitates an answer to the merits; whereas the original order offered by the Senator from Maryland admits of a plea, or answer, or further pleading. It seems to me that under the one we might demur to the articles or we might file a plea. The Senator from Ohio adopts or moves the motion of the managers as an amendment to the order of the Senator from Maryland; and the one admits of a further pleading, that is, it would admit of a demurrer, and the other requires an answer to the merits within ten days.

The PRESIDENT *pro tempore*. The question is on the amendment proposed by the Senator from Ohio, [Mr. THURMAN.] The roll-call will proceed.

The Chief Clerk called the roll on the amendment, and the roll-call having been concluded,

The PRESIDENT *pro tempore*. On agreeing to the amendment the yeas are 31 and the nays are 5; no quorum voting.

Mr. EDMUNDS. I move that the Sergeant-at-Arms be directed to request the attendance of absent Senators.

Mr. WITHERS. There is manifestly a quorum present.

Mr. ANTHONY. I suggest that if the President counts the Senate he will find that there is a quorum present.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from Vermont that the Sergeant at-Arms be directed to request the attendance of absent Senators.

The motion was agreed to.

The PRESIDENT *pro tempore*. The Sergeant-at-Arms will execute the order.

After a pause,

Mr. PADDOCK. I should like to inquire if there is not now a quorum of the Senate present?

The PRESIDENT *pro tempore*. The Chair is unaware except as the vote reveals the fact, without counting the Senate.

Mr. PADDOCK. I move that the roll be called.

Mr. EDMUNDS. We are now executing our order.

Mr. PADDOCK. I move that all further proceeding under the order be dispensed with until the roll is called.

The PRESIDENT *pro tempore*. The Senator from Nebraska moves that all further proceedings under the order be dispensed with.

The motion was not agreed to.

Mr. MORTON. Is it in order to say a word?

The PRESIDENT *pro tempore*. Debate is not in order.

Further time having elapsed,

Mr. THURMAN said: I move that the names of the Senators who have not voted be called, so that they may vote. Several have come into the Senate since the roll was called.

The PRESIDENT *pro tempore*. That is not in order. The Chair is informed that there is a quorum present, the count showing fifty-three Senators. The Sergeant-at-Arms is executing the order of the Senate. What is the further pleasure of the Senate?

Mr. SHERMAN and others. Call the absentees.

Mr. SARGENT. I believe it is in order to move to dispense with further proceedings under the call.

The PRESIDENT *pro tempore*. It is.

Mr. SARGENT. I submit that motion.

The PRESIDENT *pro tempore*. The Senator from California moves that all further proceedings under the order directing the Sergeant-at-Arms to request the attendance of Senators be dispensed with.

The motion was agreed to.

Mr. THURMAN. Is my motion in order now?

The PRESIDENT *pro tempore*. It is.

Mr. THURMAN. I move that the Senators who have not voted on the amendment be called so that they may answer.

Mr. SAULSBURY. I was not in when the motion was put; I would therefore thank the Chair to state the question.

The PRESIDENT *pro tempore*. The question is on the amendment submitted by the Senator from Ohio to the proposition submitted by the Senator from Maryland. Does the Senator desire the amendment to be read?

Mr. SAULSBURY. I desire to have both read.

The PRESIDENT *pro tempore*. Both will be read.

The CHIEF CLERK. The following is the order:

Ordered, That W. W. Belknap have leave to plead further or answer the articles of impeachment within ten days from this date.

The amendment is to add:

And that in default of an answer to the merits within ten days by respondent to the articles of impeachment, the trial shall proceed as upon a plea of not guilty.

The PRESIDENT *pro tempore*. The names of non-voting Senators will now be called.

The Secretary proceeded to call the names of the Senators who had not voted on the previous call; and the roll-call having been concluded, the result was announced—yeas 35, nays 7; as follows:

YEAS—Messrs. Anthony, Bayard, Bogy, Booth, Burnside, Cameron of Pennsylvania, Caperton, Cockrell, Dennis, Edmunds, Gordon, Hamilton, Hitchcock, Johnston, Jones of Florida, Kelly, Key, McCreery, Maxey, Mitchell, Morrill of Vermont, Morton, Norwood, Ransom, Robertson, Sargent, Saulsbury, Sherman, Stevenson, Thurman, Wadleigh, West, Whyte, Withers, and Wright—35.

NAYS—Messrs. Conkling, Cooper, Cragin, Eaton, Ferry, Goldthwaite, and Howe—7.

NOT VOTING—Messrs. Alcorn, Allison, Barnum, Boutwell, Bruce, Cameron of Wisconsin, Christiancy, Clayton, Conover, Davis, Dawes, Dorsey, Frelinghuysen, Hamlin, Harvey, Ingalls, Jones of Nevada, Kernan, Logan, McDonald, McMillan, Merrimon, Morrill of Maine, Oglesby, Paddock, Patterson, Randolph, Sharon, Spencer, Wallace, and Windom—31.

The PRESIDENT *pro tempore*. The amendment of the Senator from Ohio is agreed to. The question recurs on the order proposed by the Senator from Maryland as amended, which will be read as it now stands.

The Chief Clerk read as follows:

Ordered, That W. W. Belknap have leave to plead further or answer the articles of impeachment within ten days from this date; and that in default of an answer to the merits within ten days by respondent to the articles of impeachment, the trial shall proceed as upon a plea of not guilty.

Mr. WHYTE. I move to strike out "plead further or," so as to leave it simply "answer," in order to correspond with the amendment which has now been attached to the order.

The PRESIDENT *pro tempore*. Is there objection to this amendment? The Chair hears none, and the order will be so modified. The question is on the order as so amended, and the roll-call will proceed.

The question being taken by yeas and nays, resulted—years 33, nays 4; as follows:

YEAS—Messrs. Bayard, Bogy, Booth, Cameron of Pennsylvania, Caperton, Cockrell, Cooper, Dennis, Edmunds, Goldthwaite, Gordon, Hamilton, Hitchcock, Johnston, Kelly, Key, McCreery, Maxey, Mitchell, Morrill of Vermont, Norwood, Ransom, Robertson, Sargent, Saulsbury, Sherman, Stevenson, Thurman, Wadleigh, West, Whyte, Withers, and Wright—33.

NAYS—Messrs. Cragin, Ferry, Howe, and Morton—4.

NOT VOTING—Messrs. Alcorn, Allison, Anthony, Barnum, Boutwell, Bruce, Burnside, Cameron of Wisconsin, Christiancy, Clayton, Conkling, Conover, Davis, Dawes, Dorsey, Eaton, Frelinghuysen, Hamlin, Harvey, Ingalls, Jones of Florida, Jones of Nevada, Kernan, Logan, McDonald, McMillan, Merrimon, Morrill of Maine, Oglesby, Paddock, Patterson, Randolph, Sharon, Spencer, Wallace, and Windom—36.

So it was

Ordered, That W. W. Belknap have leave to answer the articles of impeachment within ten days from this date; and that in default of an answer to the merits within ten days by respondent to the articles of impeachment, the trial shall proceed as upon a plea of not guilty.

Mr. Manager LORD. Mr. President, may I ask consideration upon the last motion submitted by the managers?

The PRESIDENT *pro tempore*. The Secretary will report the proposition.

The Chief Clerk read as follows:

Resolved, That on the 11th day of July, 1876, the Senate sitting as a court of impeachment will proceed to hear the evidence on the merits in the trial of this case.

Mr. Manager LORD. Am I in order in saying a word on that?

The PRESIDENT *pro tempore*. Certainly.

Mr. Manager LORD. Mr. President and Senators, the reason for fixing this time on the 11th of July next is mainly that the witnesses are now scattered to both sides of the continent. During this long delay we could not keep the witnesses, we thought, in justice to them, and therefore they were allowed to go to their respective homes. Very likely before the 11th of July, possibly before the 1st of July, these witnesses can be gathered in; but we deem it more convenient to fix the 11th of July, and then it will be much more certain that the witnesses will be here on that day than though an earlier day should be fixed.

Then, again, the House which we represent is anxious not to have this trial interfere with the pending legislation. It is important that all be done before the 30th of June that can be done, and in order that the trial need not interfere with the important legislation before Congress, and in order that we may be enabled to get these witnesses from these distant points, the managers propose this day for trial, the 11th of July.

Mr. EDMUNDS. Mr. President, I move to amend that order by making it the 6th instead of the 11th of July.

Mr. Manager LORD. Mr. President, the managers accept that amendment.

The PRESIDENT *pro tempore*. The managers accept the amendment. The Secretary will report the proposititon as now modified by the managers.

The Chief Clerk read as follows:

Resolved, That on the 6th day of July, 1876, the Senate sitting as a court of impeachment will proceed to hear the evidence on the merits in the trial of this case.

The PRESIDENT *pro tempore*. Senators, the managers on the part of the House submit this proposition for your decision.

Mr. SARGENT. I move to amend by saying the 19th day of June.

The PRESIDENT *pro tempore*. The Chair will here rule that a proposition submitted by the counsel or the managers is not amendable by Senators. The Chair will entertain a proposition of the Senators. The managers modified their proposition according to the suggestion of the Senator from Vermont, and therefore the Chair entertained that. The Senator from California can move a proposition covering the point he wishes to reach, and the Chair will entertain it.

Mr. MORTON. Mr. President, on a question of this kind, so intimately affecting the business of the Senate, I think there ought to be opportunity for the Senate to be heard on it. Here it is proposed to spread this trial all over the summer. I move that the Senate retire for the consideration of this question.

Mr. EDMUNDS. I suggest that the Senate be cleared.

Mr. THURMAN. I ask unanimous consent that the rules be suspended and we go on.

Mr. EDMUNDS. That I object to.

The PRESIDENT *pro tempore*. Objection is made to the suggestion of the Senator from Ohio.

Mr. Manager McMAHON. Before the motion of the Senator from Indiana is put, I desire to say that the managers can be ready to try this case at any time within ten days from this date. The suggestion made by the chairman was chiefly to accommodate the public business, as I understand it; but if the Senate sees proper, in view of its knowledge of the situation of the public business, to fix this trial for the 19th of June, having had peculiar means of knowing where the witnesses are, how soon they can be procured, and what we want, I think I can safely say, on behalf of the managers, that we shall be ready on that time. Of course, it is only two days, after the answer is to be put in, but that is for the Senate to consider when they retire. We shall be ready at any time within a reasonable period to go on with the trial.

The PRESIDENT *pro tempore*. The Chair did not hear the proposition of the Senator from Indiana. Will he state it again?

Mr. MORTON. I move that the Senate retire to consider this question.

Mr. EDMUNDS. I suggest that we close the doors and stay here.

Mr. MORTON. It is suggested that I change the motion to one that the galleries be cleared and the doors closed, that the Senate may deliberate. I submit that motion.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from Indiana that the doors be closed and the galleries cleared, that the Senate may deliberate.

The motion was not agreed to; there being, on a division—ayes 15, noes 24.

The PRESIDENT *pro tempore*. The question is on the proposition of the managers as modified, which will be read.

The Chief Clerk read as follows:

Resolved, That on the 6th day of July, 1876, the Senate sitting as a court of impeachment will proceed to hear the evidence on the merits in the trial of this case.

Mr. SARGENT. Mr. President, I propose the same order, striking out the time fixed and inserting the 19th of June. If Senators will wait while I go through the manual exercise of writing it, very well. Otherwise I think the Clerk might write it out.

The PRESIDENT *pro tempore*. The rule requires all motions to be reduced to writing. The Chair will enforce the rule. The Secretary will reduce this motion to writing.

The Chief Clerk read as follows:

Resolved, That on the 19th day of June, 1876, the Senate sitting as a court of impeachment will proceed to hear the evidence on the merits in the trial of this case.

Mr. ANTHONY. Do I understand that the vote refusing to clear the galleries is equivalent to a vote to refuse to retire for consultation?

The PRESIDENT *pro tempore*. It is. The Chair put the question on clearing the galleries and closing the doors that the Senate might deliberate, and the Senate declined to do it.

Mr. ANTHONY. It is likely some might be willing to retire who would not wish to clear the galleries. I move that the Senate retire for consultation.

The motion was not agreed to.

The PRESIDENT *pro tempore*. The proposition of the Senator from California, which has been read, being the proposition of a Senator, the Chair will put the question on it as first in order.

Mr. ANTHONY. I move to substitute for the 19th of June the 11th of July.

The PRESIDENT *pro tempore*. The Senator from Rhode Island moves to amend the proposition of the Senator from California by substituting the 11th of July.

Mr. EDMUNDS. Is the proposition of the Senator from California before the Senate?

The PRESIDENT *pro tempore*. It is; and the Senator from Rhode Island moves to amend it by striking out "the 19th day of June" and inserting "the 11th day of July."

Mr. CAMERON, of Pennsylvania. Is that liable to be amended again?

The PRESIDENT *pro tempore*. It is.

Mr. CAMERON, of Pennsylvania. I move to substitute the 6th for the 11th of July.

The PRESIDENT *pro tempore*. The Senator from Pennsylvania moves to amend the amendment by inserting the 6th of July instead of the 11th. The question is on this amendment to the amendment.

Mr. WRIGHT. I understood that the order offered by the managers was the pending order, and that the order offered by the Senator from California was not an amendment to that, and therefore the question would be put on the propositions in the order they were offered.

The PRESIDENT *pro tempore*. The Chair has ruled that a proposition made by managers or counsel is not amendable by Senators; but any proposition made by a Senator is amendable by a Senator, nor can the proposition made by Senators be amended by the counsel or managers. A motion made by a Senator has priority of one offered by the managers or the counsel.

Mr. WRIGHT. But I understood the Chair to say that the order offered by the managers, being first in time, the vote would first be taken.

The PRESIDENT *pro tempore*. If the Chair stated that, he was incorrect.

Mr. WRIGHT. I certainly so understood.

The PRESIDENT *pro tempore*. The Chair holds that the proposition of a Senator has priority of the proposition of the parties. The proposition offered by the Senator from California being before the Senate, it is proposed to be amended by the Senator from Rhode Island, to which the Senator from Pennsylvania offers an amendment. The Secretary will read the amendment to the amendment.

Mr. EDMUNDS. I rise to inquire whether, if no Senator asks for the yeas and nays on these points of time, it is necessary to call the roll?

The PRESIDENT *pro tempore*. The rule requires it; but, if no Senator asks for the yeas and days, the Chair will put the question without them.

Mr. EDMUNDS. I think the seventh rule excuses us from calling the roll on these questions unless the yeas and nays are regularly demanded.

Mr. SARGENT. Let the several amendments be read that we may know how the question stands.

The CHIEF CLERK. The pending proposition is to strike out "the 11th" and insert "the 6th;" so as to read:

That on the 6th day of July, 1876, the Senate sitting as a court of impeachment, &c.

The PRESIDENT *pro tempore*. The question is on this amendment, proposed by the Senator from Pennsylvania to the amendment of the Senator from Rhode Island.

The amendment to the amendment was agreed to.

The PRESIDENT *pro tempore*. The question now recurs on the proposition of the Senator from California thus amended, which will be read.

Mr. SARGENT. I rise to a point of order.

The PRESIDENT *pro tempore*. The Senator will state his point of order.

Mr. SARGENT. The proposition of the Senator from Rhode Island has been amended by the amendment of the Senator from Pennsylvania; and, being so amended, the question is whether that shall be substituted for the proposition which I made.

The PRESIDENT *pro tempore*. The proposition of the Senator from Rhode Island was simply as to time, and the Chair took the amendment adopted by the Senate as taking the place of the amendment of the Senator from Rhode Island. The Senator from Rhode Island moved one day; the Senator from Pennsylvania moved a different day, and that was agreed to by the Senate.

Mr. SARGENT. Exactly; and now the question is between that date, being the 6th of July, and the 19th of June, as I moved.

Mr. EDMUNDS. That is it.

The PRESIDENT *pro tempore*. So the Chair stated, and he directed the question to be reported as it is now proposed to be amended.

The CHIEF CLERK. The original proposition was in these words:

That on the 19th day of June, 1876, the Senate sitting as a court of impeachment will proceed to hear the evidence on the merits in the trial of this case.

Mr. WHYTE. There must have been some misunderstanding, certainly, on the part of some Senators; certainly there has been upon mine. Do I understand that the Senate has already adopted the 6th of July?

The PRESIDENT *pro tempore*. The Chair will state the question. The Senator from California moved in his proposition the 19th of June. The Senator from Rhode Island moved to strike out that date and insert the 11th of July. The Senator from Pennsylvania moved to amend the amendment, and instead of the 11th to insert the 6th of July. That has taken the place of the amendment of the Senator from Rhode Island, and the question now stands upon the proposition of the Senator from California as thus amended.

Mr. EDMUNDS. Not as amended, but as proposed to be amended.

Mr. THURMAN. I submit that the question is, Shall the 19th of June be stricken out and the 6th of July inserted?

Mr. WHYTE. That is the way we understood the question.

The PRESIDENT *pro tempore*. The amendment of the Senator from Rhode Island, as amended, stands in place of the proposition submitted by the Senator from California. So the Chair understands. All the difference is that the proposition of the Senator from Pennsylvania has taken the place of that of the Senator from Rhode Island. The question now is, Shall that be substituted for the original proposition of the Senator from California?

Mr. MITCHELL. Before the vote is taken, I should like to put an inquiry to the counsel for the respondent.

Will the 19th of June give the respondent's counsel such time as they deem necessary to prepare for trial on the merits?

The PRESIDENT *pro tempore*. The Senate will hear the counsel.

Mr. BLAIR. We have had no opportunity to confer on the subject, but, so far as advised, that would not give us the necessary time. We have some witnesses who will not be attainable at that time.

The PRESIDENT *pro tempore*. The question now before the Senate is, Will the Senate strike out the 19th of June and insert the 6th of July? The Chair puts it in a different form so as to make it understood.

The amendment, as amended, was rejected.

The PRESIDENT *pro tempore*. The question recurs on the proposition of the Senator from California.

Mr. BLAIR. Would it be in order for the counsel for the respondent to make a motion in regard to the time?

The PRESIDENT *pro tempore*. It would be in order for them to make a proposition, but it would not be in order to amend the proposed order.

Mr. EDMUNDS. It would be in order to be heard.

The PRESIDENT *pro tempore*. The Chair will entertain the proposition of the counsel.

Mr. BLAIR. I would beg, after conferring, to state to the Senate that we can only judge of the character of the witnesses needed for our defense by the character of those who are summoned here for the prosecution. There are some witnesses summoned for the prosecution whose testimony has been taken that we do not think bears directly upon the allegations contained in the articles. If those witnesses are to be examined—and I presume they will be, as they have been examined formerly—we shall need a class of witnesses and testimony which will not be at all attainable within the time mentioned by the order proposed to be adopted now.

We think that justice to the defendant will be secured and the public business quite as well advanced by laying this trial over until

the next session of the Senate, or until some special adjournment of the Senate for November; and if it be in order for me to submit a proposition of that kind on the part of the defense I will do so. Of course the Senate will vote upon the subject. If it votes down the proposition of the Senator from California it will be permissible, I presume, to then offer a motion in writing to adjourn over this trial until November or the 6th day of December next.

I take the liberty of saying to the Senate that, while of course they know their own business better than I do, it seems to me that there can be no public object in requiring this trial to go on at this time. It seems to me that the convenience of the Senate and the convenience of all parties would be promoted by the adjournment of the trial over, say, to the 6th of December.

Mr. BLACK. Or to the 1st of November.

Mr. BLAIR. Or to the 1st of November, some time after the summer heats shall have passed away, when it would be convenient for all parties to be here. Our original proposition, as the Senate knows, was to adjourn this question over until after the presidential election. I do not think that anything has occurred since that motion was made to derogate from the soundness of the views I expressed in making the motion, and I now give notice to the Senate that, if they shall vote down this proposition of the Senator from California, I shall hope to make that motion.

The PRESIDENT *pro tempore*. The question is now upon the original proposition submitted by the Senator from California.

Mr. BLAIR. Before the vote is taken, I desire to suggest that my client says that General Terry, who is commanding an expedition, cannot be brought here in time for the occasion now mentioned. It is necessary for him to be here, provided certain witnesses now on the list of those to be examined by the counsel for the House of Representatives are examined. In that case General Terry would be an indispensable witness for him, and he cannot be here before fall. He is ready to make affidavit of that fact, if the Senate should require it.

The PRESIDENT *pro tempore*. The question is upon the original proposition submitted by the Senator from California, which the Secretary will now report.

The Chief Clerk read as follows:

Ordered, That on the 19th of June, 1876, the Senate sitting as a court of impeachment will proceed to hear the evidence on the merits of the trial in this case.

Mr. MORRILL, of Maine. That is not open to debate, I understand?

The PRESIDENT *pro tempore*. It is not open to debate.

Mr. MORRILL, of Maine. I ask unanimous consent to make a single observation, not by way of debate at all, but by way of suggestion.

The PRESIDENT *pro tempore*. Is there objection to the request of the Senator from Maine? The Chair hears no objection, and he will proceed.

Mr. MORRILL, of Maine. The question of fixing the time, in my mind, is very important to the Senate and the country.

Mr. EDMUNDS. I think if the Senator will move that the doors be closed it may succeed; and then we can consider the question.

Mr. MORRILL, of Maine. I desire to say simply in the interests of the exigencies of the public business that we ought to confer on this question before the vote is taken by the Senate.

Mr. SHERMAN. I feel it my duty to object to debate unless we can all participate in the debate. I have no objection to going into private consultation to consider this point.

Mr. MORRILL, of Maine. I suggest to my honorable friend that I stated that I did not rise for debate.

The PRESIDENT *pro tempore*. The Senator from Maine is proceeding by common consent, and is therefore entitled to the floor.

Mr. SHERMAN. I desire to hear the Senator and other Senators upon the question before the Senate.

Mr. MORRILL, of Maine. My object in making a single remark will justify me in making a motion, which I now propose to do, that the Senate have a private conference either by retiring from the Senate or by closing the doors.

Mr. EDMUNDS. I suggest to the Senator that he move to close the doors.

Mr. MORRILL, of Maine. I move that the doors be closed for deliberation.

The motion was agreed to; and the Senate proceeded to deliberate.

The floor and galleries having been cleared and the doors closed,

The question recurred on the resolution of Mr. SARGENT.

Mr. SARGENT having modified his resolution to read as follows:

Resolved, That further proceedings in this case, after the filing of his answer by the defendant, be postponed until the 6th day of December next,

Mr. EDMUNDS moved to amend the resolution by striking out "6th day of December next" and in lieu thereof inserting "6th day of July."

Mr. COCKRELL moved to amend the amendment by striking out the words proposed to be inserted and in lieu thereof inserting "19th day of June instant."

The question being taken by yeas and nays on the amendment to the amendment, resulted—yeas 19, nays 27; as follows:

YEAS—Messrs. Allison, Bayard, Bogy, Caperton, Cockrell, Dennis, Gordon, Hamilton, Johnston, Maxey, Morrill of Vermont, Norwood, Sargent, Saulsbury, Sherman, Stevenson, Thurman, Whyte, and Withers—19.

NAYS—Messrs. Anthony, Booth, Burnside, Clayton, Conkling, Cooper, Cragin, Dorsey, Eaton, Edmunds, Ferry, Goldthwaite, Hamlin, Howe, Kelly, Key, Logan, McCreery, Mitchell, Morrill of Maine, Morton, Paddock, Ransom, Robertson, Wadleigh, Windom, and Wright—27.

NOT VOTING—Messrs. Alcorn, Barnum, Boutwell, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Conover, Davis, Dawes, Frelinghuysen, Harvey, Hitchcock, Ingalls, Jones of Florida, Jones of Nevada, Kernan, McDonald, McMillan, Merrimon, Oglesby, Patterson, Randolph, Sharon, Spencer, Wallace, and West—27.

So the amendment to the amendment was rejected.

The question recurring on the amendment of Mr. EDMUNDS, he called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 35, nays 9; as follows:

YEAS—Messrs. Anthony, Bayard, Bogy, Booth, Caperton, Cockrell, Conkling, Cooper, Cragin, Dennis, Eaton, Edmunds, Ferry, Goldthwaite, Gordon, Hamilton, Hamlin, Howe, Johnston, Kelly, Key, McCreery, Maxey, Mitchell, Morrill of Maine, Morrill of Vermont, Norwood, Ransom, Robertson, Saulsbury, Stevenson, Thurman, Wadleigh, Whyte, Withers, and Wright—36.

NAYS—Messrs. Allison, Burnside, Clayton, Jones of Nevada, Morton, Paddock, Sargent, Sherman, and Windom—9.

NOT VOTING—Messrs. Alcorn, Barnum, Boutwell, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Conover, Davis, Dawes, Dorsey, Frelinghuysen, Harvey, Hitchcock, Ingalls, Jones of Florida, Kernan, Logan, McDonald, McMillan, Merrimon, Oglesby, Patterson, Randolph, Sharon, Spencer, Wallace, and West—28.

So the amendment was agreed to.

The resolution of Mr. SARGENT having been further amended, on the motion of Mr. EDMUNDS, it was agreed to; as follows:

Ordered, That on the 6th of July, 1876, at one o'clock p. m., the Senate sitting as a court of impeachment will proceed to hear the evidence on the merits of the trial in this case.

On motion of Mr. EDMUNDS, the doors were re-opened, after one hour and thirty-five minutes spent in deliberation.

The managers and the respondent and his counsel having taken their seats,

The PRESIDENT *pro tempore*. The Senate continues the trial in open session. It has made an order which will be read.

The Chief Clerk read as follows:

Ordered, That on the 6th of July, 1876, at one o'clock p. m., the Senate sitting as a court of impeachment will proceed to hear the evidence on the merits of the trial in this case.

Mr. BLAIR. Mr. President, we have a motion to submit, which I will read to the Senate, as it is in my writing:

In the Senate of the United States sitting as a court of impeachment.

THE UNITED STATES }
vs.
WILLIAM W. BELKNAP. }

William W. Belknap, by his counsel, moves the court that an order be made upon the managers on the part of the House of Representatives to furnish within twenty-four hours to the accused or his counsel a list of the witnesses whom they intend to call, together with the particulars of the facts which they expect to prove by them.

Mr. HAMLIN. Let the Secretary read the motion.

The PRESIDENT *pro tempore*. The Secretary will read the motion.

The motion was read by the Chief Clerk.

Mr. Manager LORD. We simply say now that we object to the order entirely as without precedent and without reason.

The PRESIDENT *pro tempore*. Senators, you have heard the proposition submitted for your decision on the part of the counsel for the defense.

Mr. Manager McMAHON. Before the question is put, I desire to call the attention of the Senate to the fact that a large portion of the testimony, and especially the material testimony in this case, is already in possession of the respondent by reason of the investigation of the House which was published. He is fully posted in regard to every point that he may have to meet.

Mr. BLAIR. Mr. President and Senators, of course in respect to that part of the testimony which has been printed, it is very easy to furnish it to us; but I beg leave to say that there is a large portion of the testimony taken before the Judiciary Committee of which we are not at all informed, which we have applied to the managers for copies of, but they repelled us and refused to give them to us. We do not know what part of it they may rely on at all. We have rumors of its character from the press; but we do not know what part of it they mean to rely upon, or what facts they mean to rely upon; and as we are ordered to prepare, we want to make that preparation to meet such case as they may make. We think it is a perfectly fair proposition, and it is made in perfect good faith.

Mr. THURMAN. I submit an inquiry to be propounded to counsel.

The PRESIDENT *pro tempore*. The question of the Senator from Ohio will be read.

The Chief Clerk read as follows:

Is there any precedent for the order asked for, either in impeachment trials or in ordinary courts of criminal jurisdiction?

Mr. BLACK. No; but certainly there ought to be one made.

Mr. Manager McMAHON. It is rather late in the day.

Mr. BLACK. We do not go upon precedent here; that is, this application is not founded upon anything that has ever happened before. There never was a case like this before. I have never heard whether the managers object to this order or not. If they do, I cannot conceive for what reason. Certainly they do not intend to keep us in ignorance of the kind of case they are going to produce against us and take us by surprise and then proceed and run over us and get a conviction against us on grounds that we have no notice of. They do not think it is unfair, I suppose, to tell us beforehand what sort

of facts they intend to produce. We want it soon in order that there may be no delay about this. We are for speeding this cause. None of your dilatory motions, if you please; do not hang back now since you have got the time fixed for trial and put us in such a condition as that we shall have to ask for a continuance again, and be again accused of desiring to delay. But will the gentleman tell us now upon what ground they desire not to let us into this wonderful secret that they have got?

Mr. Manager McMAHON. The specifications are very distinct and clear, are they not?

Mr. BLACK. The specifications of the general charge are clear enough.

Mr. Manager McMAHON. The particular day is given in each one on which your client is charged with receiving the money.

Mr. BLACK. Very well. Now we want you to state the particular facts, the evidence upon which you are going to sustain that, and the names of the witnesses by whom you intend to prove it.

Mr. Manager LORD. Mr. President and Senators, as has already been suggested by my colleague, the articles of impeachment set forth with great exactness and with great minuteness the precise facts of the case; and what is the proposition which the counsel makes? It is no more and no less than this, that he has the right to invade the room of the managers, that he has the right to ascertain their course of trial, that he has the right to know every possible witness to prove a certain fact.

Sufficient it is to say that the wisdom of all the ages is against it. The learned counsel had better devote himself to answering the question of the Senator, and find whether in all the past ages a single precedent of this kind has been had in any criminal proceeding. It is not enough for him to rise here and say he did not hear the managers object. He may possibly have been out of the room. It is not enough for him to stand here and say, "We need to make a precedent in this case." It is enough for us to answer that he asks for an extraordinary precedent, extraordinary proceeding, against the wisdom of all the past, and in regard to which he cannot find the first authority in rummaging through all the books of the common law and all the books relating to criminal jurisprudence. I am surprised that any such proposition should be seriously made here, that we should be compelled, in advance, to disclose to him the names of witnesses and what each witness is expected to testify to, when we have laid before him in the broadest manner every charge that we make, and one article of these articles of impeachment contains seventeen specifications. Many of us thought so much labor was unnecessary; and yet in order that there need be no complaint whatever, in order that we might treat the other side with the utmost judicial fairness, we have spread upon the record the amount and the time and the place and the purpose. Now for him to ask of us that we should hand him in the names of those witnesses beyond the Rocky Mountains and this side of the Rocky Mountains—I will not say that he asks this for any sinister purpose; of course we are bound to assume that he asks it for an honorable purpose—but sufficient to say that you would convict very few man on the face of the earth, that very few tribunals would ever render the verdict of guilty if such an order as this should be made in a criminal proceeding.

Mr. BLACK. I will tell the honorable manager the reason it is very important for us to have it. They have their witnesses here, or at least within easy reach. Ours are scattered all over the continent; some of them in California, others in the Indian Territory. It becomes absolutely necessary for us, as soon as we can, to get out our subpœnas for witnesses and use all diligence in bringing them here. If the trial is to go on upon the 6th of July or at any other time, even a month later than that, we will be hard pressed for time. We cannot know what particular witness we need or how many of them unless we are informed of theirs and understand what facts they mean to prove or try to prove.

I maintain, as to every public accuser, a manager of the House of Representatives, an attorney-general, or district attorney, if he has a criminal case which he intends to prosecute against a citizen, that he is bound by his duty and as a lover of justice to disclose the whole case to the defendant as fully as possible and at the earliest moment.

The gentlemen say, when we ask them for this list, that it is a secret which they have the right to keep and they will keep it until the moment of the trial and then spring it upon us, so that we shall be unable to meet it by contradiction or explanation. They wish to take us by surprise as much as possible, and convict the defendant, if they can, without giving him a chance to show his innocence. They say there is no precedent for such a call as we make upon them now. Nothing like this is found in the common-law cases. I do not know how far back they want us to go for a precedent old enough to suit them. In modern times it has never been refused. I admit that by the common law, whose authority they invoke, a man on trial in any criminal court had no chance at all for life or liberty. He was not allowed counsel. He was not allowed to call witnesses. He was not confronted with the witnesses against him. None of those privileges which are secured in our Constitution were given to a party charged with a criminal offense by the ancient common law. That common law was a bloody old beast.

Mr. Manager LORD. Will the gentleman allow me to ask him a question? And that is, what was his practice in this regard as Attorney-General; whether he gave instructions to the district attorneys throughout this country to furnish the evidence of the witnesses for the prosecution to the other side or not?

Mr. BLACK. I never gave instructions one way or the other; but I never had a secret in my life which I kept from a defendant in a criminal case. No man should ask me in vain for any fact that he ought to know so that he might be prepared to meet it. I would hold back nothing. I stand utterly amazed that there should be any objection to the demand that we are making now.

But they could not convict men, they say, unless they could come upon them secretly and suddenly, and catch them unawares; and so they lie in wait, concealed in ambush, to take them by surprise. That is what the learned gentleman means that this man cannot be convicted, if he gets a fair trial, if he is notified beforehand what the evidence is, so that he can answer it.

I am sure, just as perfectly sure as I can be of any fact, that not one of the gentlemen who compose this committee of managers has the least intention to do anything wrong or unfair, and when they come to sleep upon it, whether this order is made now or made at another time or not made at all, when they consult their pillows about it, every one of them will say that it is a demand which ought to have been listened to with pleasure and granted without hesitation.

The PRESIDENT *pro tempore*. The Secretary will report the proposed order submitted by counsel for the respondent.

The Chief Clerk read as follows:

William W. Belknap, by his counsel, moves the court that an order be made upon the managers on the part of the House of Representatives to furnish within twenty-four hours to the accused or his counsel a list of the witnesses whom they intend to call, together with the particulars of the facts which they expect to prove by them.

The PRESIDENT *pro tempore*. The question is on concurring in this proposed order.

The order was rejected.

Mr. SHERMAN. If there is no further motion on the part of the counsel or managers, I move that the court adjourn until the 6th of July at one o'clock.

Mr. Manager LORD. I would inquire whether sufficient provision has been made in regard to the answer? I call the attention of the Senator to that. The answer is to be put in in ten days. I ask whether sufficient provision has been made in regard to the answer and replication? I think some provision should be made in that regard.

Mr. SHERMAN. I will modify the motion at the suggestion of Senators around me, who think we ought to meet on the tenth day after this, that the Senate meet on the 16th of June at one o'clock.

Mr. EDMUNDS. You had better make it twelve o'clock. We can finish it in five minutes and then have an uninterrupted day for legislative business.

Mr. SHERMAN. I accept the suggestion and say twelve o'clock.

The PRESIDENT *pro tempore*. It is moved that the Senate sitting in trial adjourn until Friday, the 16th of June, at twelve o'clock noon.

Mr. SARGENT. I ask that that be withdrawn that I may offer the following:

Resolved, That the managers furnish to the defendant or his counsel within twenty-four hours a list of witnesses that they intend to call in this case.

Mr. SHERMAN. I withdraw my motion for the present.

The PRESIDENT *pro tempore*. The question is on the resolution of the Senator from California, [Mr. SARGENT.]

Mr. EDMUNDS. I move to amend that order by striking out "twenty-four hours" and inserting "four days."

Mr. SARGENT. I have no objection to the modification.

The PRESIDENT *pro tempore*. The Senator from California accepts the modification.

Mr. Manager McMAHON. I should like to understand one matter. We may call a good many witnesses whom we have not now in our minds. We do not want any order that would preclude us from calling any witnesses that we might at any future time deem important in the case. I may state here, so far as that is concerned, that the gentlemen have pretty full knowledge of all we expect to call, or nearly all, for they have been under subpœna for these four weeks.

Mr. SARGENT. I should like consent to say about three words.

The PRESIDENT *pro tempore*. Is there objection? The Chair hears none.

Mr. SARGENT. The practice in every State of the Union is to indorse on the back of the indictment, as required by statutes, the names of the witnesses called before the grand jury. It has never been construed that any subsequent witnesses whom it is found necessary to call should be ruled out; any further witnesses that were necessary in the trial of the case have always been admitted, notwithstanding that statute. That I believe is the universal rule. I do not propose if the managers find it necessary to introduce additional witnesses that they shall be ruled out by the adoption of this order, but that they shall furnish a list of the witnesses that they now intend to call.

Mr. EDMUNDS. If I may ask unanimous consent of the Senate, which I do not believe in at all myself, to say one word, I will do it.

The PRESIDENT *pro tempore*. Is there objection? The Chair hears none.

Mr. EDMUNDS. I should propose to modify the order of the Senator from California so as to say "as far as at present known to the managers." He is quite right, according to my opinion, in his statement of the law, that if we made a peremptory order, which on its

face seemed to exclude everything else, yet, if a witness was produced in good faith who was not known before, he would be received, we at the same time taking care that no injustice by way of surprise should be done to the other party. But to make it entirely safe, so that there shall be no misunderstanding, I move also besides the four days, which my friend accepts, to say "a list of the witnesses so far as at present known to the managers," so that they shall in good faith give to the other side all the names of all the witnesses whom they have at present any intention to call.

Mr. SARGENT. I accept the modification.

Mr. THURMAN. Mr. President——

The PRESIDENT *pro tempore*. The Senator from Ohio. Debate is not in order.

Mr. THURMAN. I ask leave to be heard as other Senators have been.

The PRESIDENT *pro tempore*. Is there objection? The Chair hears none.

Mr. THURMAN. I must say that it is news to me that there is any law anywhere which requires the prosecution to give a list of its witnesses to the defendant; but I am bound to admit that there must be, because counsel say so. There is certainly none in my State; I never heard of such a thing before. But, if it is so, it ought to be reciprocal. The State has some rights as well as the defendant; and therefore I move to add:

And that within four days thereafter the respondent shall furnish the managers with a list of the witnesses he proposes to examine, so far as they shall be known.

Mr. BLACK. We have no objection.

Mr. BAYARD. Mr. President——

The PRESIDENT *pro tempore*. Is there objection to hearing the Senator from Delaware? The Chair hears none.

Mr. BAYARD. I cannot but remark that in the very nature of things the list on either side must be incomplete, and being incomplete it will be absolutely without value to either party. Therefore the request on either side, in my opinion, would be not only lacking entirely in precedent, but lacking in judgment and sound logic.

Mr. WHYTE. I ask unanimous consent merely to say one word to correct a misapprehension of the Senator from Ohio.

The PRESIDENT *pro tempore*. The Chair hears no objection.

Mr. WHYTE. There is an act of Congress on the subject. In all cases of trial of treason and other capital offenses the party accused shall have a list of the witnesses and the places of their abode.

Mr. SHERMAN. I want that to be read.

Mr. WHYTE. It is as follows:

SEC. 1033. When any person is indicted of treason, a copy of the indictment and a list of the jury and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each juror and witness, shall be delivered to him at least three entire days before he is tried for the same.

Mr. GORDON. That is for treason.

Mr. WHYTE. Treason and any other capital offense.

When any person is indicted of any other capital offense, such copy of the indictment and list of the jurors and witnesses shall be delivered to him at least two entire days before the trial.

Mr. Manager LORD. Mr. President, I will say that we make no objection to the order after four days to furnish the list of witnesses. It was the other part of the order asked for to which we made particular objection.

The PRESIDENT *pro tempore*. The Senator from Ohio [Mr. THURMAN] has moved an amendment, which will be read.

The Chief Clerk read as follows:

Insert at the end of the order:

And that within four days thereafter the respondent furnish to the managers a list of witnesses, as far as known, that he intends to summon.

The PRESIDENT *pro tempore*. The question is on this amendment.

The amendment was agreed to.

The PRESIDENT *pro tempore*. The question is on the resolution as amended, which the Secretary will report.

The Chief Clerk read as follows:

Ordered, That the managers furnish to the defendant, or his counsel, within four days, a list of witnesses, as far as at present known to them, that they intend to call in this case; and that, within four days thereafter, the respondent furnish to the managers a list of witnesses, as far as known, that he intends to summon.

The resolution, as amended, was agreed to.

Mr. SHERMAN. I renew my motion that the Senate sitting for the trial of the impeachment adjourn until the 16th instant at twelve o'clock.

The motion was agreed to; and (at four o'clock and forty-five minutes p. m.) the Senate sitting for the trial of the impeachment adjourned until the 16th instant.

FRIDAY, *June* 16, 1876.

The PRESIDENT *pro tempore* having announced the arrival of the hour fixed, the legislative and executive business was suspended, and the Senate proceeded to the trial of the impeachment of William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

The managers on the part of the House of Representatives (with the exception of Mr. KNOTT and Mr. HOAR, who were not present) appeared and were conducted to the seats provided for them.

The respondent appeared with his counsel, Messrs. Blair and Black.

The Chief Clerk read the journal of the proceedings of the Senate sitting on Tuesday, June 6, for the trial of the impeachment of William W. Belknap.

The PRESIDENT *pro tempore*. The Senate is now ready to proceed with the trial. The Secretary will read the order made by the Senate respecting the trial.

The Secretary read the following order, adopted June 6:

Ordered, That W. W. Belknap have leave to answer the articles of impeachment within ten days from this date; and that in default of an answer to the merits within ten days by respondent to the articles of impeachment, the trial shall proceed as upon a plea of not guilty.

Mr. BLACK. Mr. President——

The PRESIDENT *pro tempore*. Senators will please give attention to the answer of the accused.

Mr. BLACK. The paper which I am about to read will require perhaps a little, but a very brief, explanation. The order made by the Senate at the last meeting was that we should plead to the merits, which means of course to the merits of our case in law or in fact; that is, we should answer to the charges or else raise an issue of law. For certain reasons, which you will find stated in the paper which I now lay before you, we decline to put in any plea; not because we do not expect to go to trial upon the legal merits as well as the facts of the case, but because any such answer as that which the Senate expect we should put in under that order would probably be construed as an admission that we are not already acquitted substantially.

But this declination to put in a plea will be followed, as a matter of course, by the course which the Senate expressed its determination to take on a former occasion, namely, that you will order the trial to proceed under a plea of not guilty, which the court itself will put in for us. We expect you to put in the plea of not guilty for us, and we hope very sincerely that you will be able to make it out, and we shall be here aiding and assisting you to the utmost of our power.

But we are in an extremely singular predicament. The sense of the Senate upon the question which was submitted to them could be expressed only against us by a vote of two-thirds. One-third and more than one-third of the Senate have decided in our favor. The others, less than two-thirds, are powerless, of course, to find against us any fact which is an essential element in any legal conviction which you may be able at any time hereafter to pronounce. The fact alleged against us, that General Belknap was a public officer within the meaning of the Constitution, has been found in our favor, but then a majority of the Senate say that judgment shall be pronounced upon that vote as if it had been a vote of two-thirds. The majority can do as they please; they can put whatever they please upon the record. While they are legally incapable of convicting him without the concurrence of two-thirds, the majority can say that we are convicted, although by them. We can do nothing but appeal to your reason and sense of justice and love of the Constitution, which we think will prevail at some time or other. That the question will be raised continually at every step in the progress of this affair, until we are finally acquitted and allowed to go hence without day, is very certain.

I now propose to read this paper, which contains our reasons for declining to plead to the merits, whatever that may mean, to put in any plea at all other than this, which is an allegation that we have been already acquitted; that there can legally be no further proceeding against us; and that we are entitled to a judgment which will allow us to go hence *sine die*. I proceed to read the paper:

In the Senate of the United States sitting as a court of impeachment.

THE UNITED STATES OF AMERICA
vs.
WILLIAM W. BELKNAP.

And now, to wit, this 16th day of June, 1876, the said William W. Belknap comes into court, and being called upon to plead further to the said articles of impeachment doth most humbly and with profoundest respect represent and show to this honorable court that on the 17th day of April last past he did plead to the said articles of impeachment, and in his said plea did allege that at the time when the House of Representatives of the United States ordered the said impeachment, and at the time when the said articles of impeachment were exhibited at the bar of the Senate against him, the said Belknap, he, the said Belknap, was and ever thereafter had been not a public officer of the United States, but a private citizen of the United States and of the State of Iowa; and that the plea aforesaid and all the matters and things therein contained were by him, said Belknap, fully verified by proofs, namely, by admissions of the said House of Representatives before said court; and the said Belknap further represents and shows to the court here that the truth and sufficiency of the plea pleaded by him as aforesaid were thereupon debated by the managers of the said House of Representatives and the counsel of this respondent, and thereupon submitted to this court for its determination and judgment thereon; and that such proceedings were thereupon had in this court on that behalf in this cause; that afterward, to wit, on the 29th day of May last past, the members of this court, to wit, the Senators of the United States sitting as a court of impeachment as aforesaid, did severally deliver their several judgments, opinions, and votes on the truth and sufficiency in law of the said plea, when and whereby it was made duly to appear that only thirty-seven Senators concurred in pronouncing said plea insufficient or untrue; whereas twenty-nine Senators sitting in said court, by their opinions and votes, affirmed and declared their opinion to be that said plea was sufficient in law and true in point of fact; so that the said Belknap in fact saith that, on the day and year last aforesaid, twenty-nine Senators sitting in said court declared therein that the said Belknap having ceased to be a public officer of the United States by reason of his resignation of the office of Secretary of War of the United States before proceedings in impeachment were commenced against him by the House of Representatives of the United States, the Senate cannot take jurisdiction of this cause; and that seven Senators did not vote upon said question, and only thirty-seven Senators, by their votes, declared their opinion to be that the Senate could take jurisdiction of said cause. And afterward thirty-seven Senators sitting in said court, and no more, concurred in a resolution declaring that "in the opinion of the Senate William W. Belknap is amenable to trial on impeachment for acts done as Secretary of War, notwithstanding his resignation of said office," and that twenty-nine of said Senators sitting in said court, by their votes,

affirmed and declared their opinion to be to the contrary thereof. And afterward, on the day and year last aforesaid, it was proposed in said court that the President *pro tempore* of the said Senate should declare the judgment of the said Senate, sitting as aforesaid, to be that said plea of said respondent should be held for naught, and a vote was taken upon said proposition; and, as said vote showed, two-thirds of the said Senators present did not concur therein; but, on the contrary thereof, only thirty-six Senators did concur therein, and twenty-seven Senators then and there present, and voting on said proposition, did by their votes dissent from and vote against said proposition. All of which appears more fully and at large upon the record of this court in this cause, to which record he, said Belknap, prays leave to refer.

Therefore the said Belknap, referring to the Constitution of the United States, article 1, section 3 clause 6, which provides that "no person shall be convicted without the concurrence of two-thirds of the members present," (meaning on trial on impeachment,) avers that his said plea has not been overruled or held for naught by the Senate sitting as aforesaid, no such judgment having been concurred in by two-thirds of the Senators sitting in said court and voting thereon; but, on the contrary thereof, as the vote aforesaid fully shows, the said plea of the said respondent was sustained, and its truth in fact and sufficiency in law duly affirmed by the said Senate sitting as aforesaid, more than one-third of the Senators of said Senate, sitting as aforesaid, having by their votes so declared, to-wit, twenty-seven Senators as aforesaid, and said twenty-seven Senators having by their votes declared and affirmed their opinion to be that said plea of said respondent was true in fact, and was sufficient in law to prevent the Senate sitting as aforesaid from taking further cognizance of said articles of impeachment.

Wherefore the respondent avers that he has already been substantially acquitted by the Senate sitting as aforesaid; and that he, the said respondent, is not bound further to answer said articles of impeachment; the said order requiring this respondent to answer over not having been made with the concurrence of two-thirds of the said Senators sitting as aforesaid and voting upon the question of the passage of said order; and said order having been passed with the concurrence only of less than two-thirds of the said Senators sitting as aforesaid and voting on the question of making and passing said order, the said order ought not to have been entered of record as an order of said court of impeachment in this cause; and said order appearing upon the whole record of said cause to be null and void, as an order of said court.

And the said respondent prays the court now here, as he has before formally moved said court, to vacate said order; and the said respondent hereby prays said court that he may be hence dismissed.

WILLIAM W. BELKNAP.
MATT. H. CARPENTER.
J. S. BLACK.
MONTGOMERY BLAIR.
Of Counsel for said Respondent.

The PRESIDENT *pro tempore*. The answer will be filed.

Mr. EDMUNDS. I do not wish that answer filed until there shall be consideration of it. I object to its being filed at present.

Mr. Manager LORD. I rose to make the same objection that the Senator has made, but it is now unnecessary. I ask that the order be made which I send to the desk.

The PRESIDENT *pro tempore*. The order submitted by the managers will be read.

The Chief Clerk read as follows:

Ordered, That the respondent, W. W. Belknap, shall not be allowed to make any further plea or answer to the articles of impeachment preferred against him on the part of the House of Representatives, but that the future proceedings proceed as upon a general plea of not guilty.

Mr. EDMUNDS. Mr. President, I would ask the Chair whether there is an application on the part of the respondent for subpœnas for certain witnesses?

The PRESIDENT *pro tempore*. The Chair does not understand how that is. The Chair has a communication bearing on that subject which he will lay before the Senate. The Secretary will read it.

The Clerk read as follows:

OFFICE SECRETARY SENATE UNITED STATES.

SIR: On the 14th of June a list of witnesses to be summoned on the part of William W. Belknap was transmitted to this office, which I respectfully lay before the Senate for its action.

W. J. McDONALD,
Chief Clerk Senate.

Hon. THOMAS W. FERRY,
President of the Senate.

Mr. EDMUNDS. What is the application? I do not care for a list of the names, but the number of names and the application, whatever it is.

The PRESIDENT *pro tempore*. The Secretary will read the accompanying paper.

The Chief Clerk read as follows:

In the Senate of the United States sitting as a court of impeachment.

THE UNITED STATES }
vs.
WILLIAM W. BELKNAP. }

Witnesses on the part of the respondent:
[Here follow the names.]

Mr. INGALLS. How many of them are there?

The CHIEF CLERK. One hundred and ninety-seven or one hundred and ninety-nine, I think.

Mr. EDMUNDS. Mr. President, if the counsel or the managers do not wish to be heard further upon any of the topics that are now before us, I move that the doors be closed for consideration of the matters submitted.

Mr. BLACK. Mr. President, we offer a paper asserting our legal and constitutional rights, as we understand them. A Senator rises and says he objects; a manager rises and says he objects. Is that a reason for simply throwing it under the table? Is there not to be some reason given for such a thing as that? What is to be done with this? Walk over us I admit you can, if a majority see proper to do so. They can do as they please; they can order it to be thrown under the table; but some little respect ought to be shown a man who is struggling for his liberty and his reputation——

Mr. EDMUNDS. I call the counsel to order. I do not think the language that he is addressing to the Chair is fit to be addressed to this court.

The PRESIDENT *pro tempore*. Counsel will use language which is proper and decorous.

Mr. BLACK. If I am out of order, I am willing to submit. What shall I do to get into order?

The PRESIDENT *pro tempore*. The counsel will proceed, using proper language. The Chair will call him to order if he does not use proper language.

Mr. BLACK. I desire that this paper shall be filed. After full and careful consultation with my colleagues and my client, we have concluded in good faith that it is our duty to put in this paper or some other paper which will disclose our reasons for declining to plead further. The paper itself is not only respectful to the Senate, but it is humble to the last degree; and either it ought to be received or some reason should be given for rejecting it.

Mr. EDMUNDS. If by unanimous consent I can say one word, perhaps I can relieve the counsel. My objection to the paper was not with a view of rejecting it, but merely of holding it in reserve until the Senate could consider what ought to be done about it. That perhaps may relieve the fear of the counsel that he is not going to have it considered.

Mr. BLACK. Our offer to file it is, then, to be put on record?

The PRESIDENT *pro tempore*. The Chair will put the question at the proper time. The objection the Chair notes; but the question will be subject to the vote of the Senate.

Mr. BLACK. I only wish to have it noted now that we offer it.

The PRESIDENT *pro tempore*. That has already been stated by the counsel. Do counsel desire to be heard further?

Mr. BLAIR. On what subject?

The PRESIDENT *pro tempore*. On the pending proposition of the managers.

Mr. BLAIR. Is that a motion in regard to this paper?

The PRESIDENT *pro tempore*. In regard to the trial. The Secretary will report the proposition submitted by Mr. Manager LORD.

The Chief Clerk read as follows:

Ordered, That the respondent, W. W. Belknap, shall not be allowed to make any further plea or answer to the articles of impeachment preferred against him on the part of the House of Representatives, but that the further proceedings proceed as upon a general plea of not guilty.

Mr. BLAIR. I do not understand, may it please the court, that any such order as that is necessary under the existing order of the Senate. By the existing order of the Senate we were given until this day to further answer, and we have openly and publicly declared that we do not propose to make any answer, but to stand by the record as the Senate has made it. Of course under these circumstances we expect

Mr. KERNAN. Will counsel allow me a moment? I supposed that the suggestion of the Senator from Vermont was that if the counsel desired to give any reason why when the counsel are refusing to plead further we should receive this paper, they should do so. That is a question we shall doubtless have to decide upon the objection; but if counsel desire to give any reason why the court should permit this paper to be filed, when the counsel refuse to file a pleading, let them give it to us now, as that will be a question that we are to consult upon, as I understand.

Mr. BLAIR. My learned colleague stated, as I understand, sufficiently our reason for declining to file any further answer and why we thought it proper for the Senate to allow us to put the paper which he read on its records. We cannot see any impropriety in asking of the Senate that liberty, to put upon the files of this trial in a formal paper our views of the effect of its previous action. That is all I desire to say on that point.

Mr. Manager LORD. Mr. President and Senators, the objection of the managers to filing this paper is that it is in direct contravention of the order of the Senate, as we view it. The order of the Senate was that on this day the respondent should plead to the merits or that the case should go to trial as upon a plea of not guilty. The Senate have not forgotten that the learned counsel who makes this motion stated distinctly in this tribunal at the last hearing that the question now raised could not be settled until the final determination of the case, for it is utterly impossible to tell at this time what the organization of the Senate will be then. The managers then said, and say now, that on this point we are prepared to argue the question at a proper time, but it seems entirely premature to attempt to argue it now, when it is impossible, as I have already said, to tell what the organization of the Senate will be when the verdict is to be taken. How many it will take to make two-thirds of the members present at that time, it is impossible now to tell; and I repeat the counsel stated emphatically that the question could not be determined until then. He now comes here, declines to plead, and asks that this rather extraordinary paper be filed. And we say there is no precedent for filing it, there is no reason for filing it, and it is a violation of the order of the Senate.

It is suggested by an associate manager—and I was about to state it myself—that if the Senate should decide to allow this paper to be filed, then we desire to be heard on the question; but, deeming it entirely improper at this time to file it, we have no more to say on that subject until the further order of the Senate.

Mr. BLAIR. Mr. President, I ask the Senate to indulge me in one observation. I think my learned friend, the chairman of the managers, is entirely mistaken in supposing that we conceded at any time that this matter could not be disposed of until the final hearing of this cause. We have not taken any such position as that. On the contrary, this paper itself takes the position, which we took in a paper heretofore presented but not noticed, that, the so-called question of jurisdiction having been raised by our special plea in bar—for that is what it was; nothing more, nothing less—it required the same vote to overrule it that it requires to overrule the plea to the merits in form, or not guilty. We wish a formal paper on the records of this body showing to the Senate and to the country the position and attitude we take upon that subject, and we think that now is the proper time. Of course, we do not say that we stand here to prevent the Senate from proceeding to the trial of the facts. We cannot do that, because they have already said—and we take it that what they have said they mean—that, if we do not on this occasion file a plea to the merits of this case, they would proceed and put in a plea of the general issue for us themselves; and we expect that now, as my colleague has said to you. All we ask is that this paper, which states formally the attitude that we hold and shall claim to hold to the end of this trial, shall be noted on the records of this body. I think that any impartial tribunal would grant us that liberty of claiming the right to argue as matter of law that this court has already decided this question in its action upon the special plea heretofore put in. I do not call for any argument from the managers now or at any time hereafter (if they choose to pretermit it) upon this question.

Mr. Manager LORD. The managers ask to substitute the order which I now submit in place of the one handed up before.

The PRESIDENT *pro tempore*. The substituted order will be read.

The Chief Clerk read as follows:

Ordered, That W. W. Belknap having made default to plead or answer to the merits within the time fixed by the order of the Senate, the trial proceed as upon a plea of not guilty, in pursuance of the former order.

Mr. DAWES. Mr. President, is there any motion pending to rescind or modify the existing order of the Senate?

The PRESIDENT *pro tempore*. There is not.

Mr. DAWES. Why, then, should not the Senate proceed to execute its own order?

The PRESIDENT *pro tempore*. There are two questions pending before the Senate, the Chair would remark to the Senator from Massachusetts. One question is on allowing the paper submitted by the counsel for the accused to be filed; the other is the proposition on the part of the managers.

Mr. WHYTE. I ask that the paper proposed by the counsel for respondent be read by the Secretary. We did not hear it fully in this part of the Chamber.

The PRESIDENT *pro tempore*. The Secretary will read the paper submitted by the counsel for the accused.

Mr. EDMUNDS. Before that is read, as it is suggested that there is no quorum present, I ask that the Chair ascertain whether that is so. We ought not to proceed without a quorum.

The PRESIDENT *pro tempore*. The Secretary will count the Senate.

The Chief Clerk proceeded to count the Senators present.

The PRESIDENT *pro tempore*. Twenty-nine Senators are present; not a quorum.

Mr. EDMUNDS. I move that the Sergeant-at-Arms be directed to request the attendance of absentees, so that we may see whether we can get a quorum.

The motion was agreed to.

The PRESIDENT *pro tempore*. The Sergeant-at-Arms will execute the order of the Senate.

Five minutes having elapsed,

Mr. EDMUNDS. It is evident that there is no quorum in the building, and it is doubtful if there be one in town. I move, therefore, that the court adjourn, which is all I can move, there being no quorum.

Mr. ALLISON. I ask when? To what time?

Mr. EDMUNDS. The only thing we can now do under the rules is to adjourn until to-morrow at twelve o'clock.

The PRESIDENT *pro tempore*. No business can be transacted until there be a quorum.

Mr. ALLISON. Then the adjournment will be until to-morrow at twelve o'clock.

The PRESIDENT *pro tempore*. It will be. The Senator from Vermont moves that the Senate sitting for the trial of the impeachment do now adjourn.

The motion was agreed to; and (at twelve o'clock and fifty-one minutes p. m.) the Senate sitting for the trial of the impeachment adjourned until to-morrow at twelve o'clock m.

SATURDAY, *June* 17, 1876.

The PRESIDENT *pro tempore* having announced the arrival of the hour fixed, the Senate proceeded to the trial of the impeachment of William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

Messrs. LORD, LYNDE, MCMAHON, and JENKS, of the managers, appeared and were conducted to the seats assigned them.

The respondent appeared with his counsel, Messrs. Blair and Black.

The Chief Clerk read the journal of yesterday's proceedings of the Senate sitting for the trial of the impeachment of William W. Belknap.

The PRESIDENT *pro tempore*. The Senate is now ready to proceed with the trial. The question now pending is, Shall the paper submitted by the accused through his counsel be filed in the proceedings of the trial?

Mr. BLACK. Mr. President, I presume it is in order for me to make the motion which I am about to make now. I am satisfied, so is my colleague, so is my client, that it is outside of the limits of physical possibility for this cause to be tried in this weather. Besides, a large number of our witnesses are so far away as to make it nearly impossible now to get them here by the 6th of July. Some of them perhaps cannot be got by that time nor for some time afterward. But there are reasons which must be obvious to members of the Senate and which I think will be appreciated and understood by the managers of the House, which require that the trial of this cause should be postponed to about the middle of November. These reasons we have known and understood very well ourselves, and we have repeatedly acted upon them, but without giving a very full explanation of them. I think they are known to the managers, ought to be known to the House, and probably are understood by the Senate.

I appeal to the House through its managers to say whether they have any desire to press this cause to a trial upon the 6th of July. If they have any such desire, then I hope they will say so; and, if they consent to it, if it is found to be more convenient for the House and its managers as well as more likely to result in justice to the accused party, we will appeal to the Senate with very considerable confidence that what we both desire will be acceded to by the court.

I therefore now move, merely for the purpose of testing the question, that this cause be continued until some day in the month of November.

The PRESIDENT *pro tempore*. The Secretary will reduce the motion to writing. [A pause.] The Secretary will report the motion.

The Chief Clerk read as follows:

Ordered, That this cause be now continued until some convenient day in the month of November.

The PRESIDENT *pro tempore*. The Senate will now hear the managers.

Mr. Manager LORD. I think some day had better be named in the proposed order, but that can be done hereafter.

Mr. President and Senators, under circumstances which I need not now here detail, surrounding this case, the managers have concluded to ask leave on this motion to consult with the House. I will say now that, whatever the conference with the House may result in and whatever the determination of the Senate may be, we desire that the question of filing this paper shall be disposed of when there is a quorum; but, on the question of postponement under all the circumstances in which we find ourselves placed and the case placed, we desire leave to confer with the House.

Mr. EDMUNDS. I move that the court adjourn, which will be, of course, until Monday at twelve o'clock.

The question being put, there were on a division—ayes 20, noes 14; no quorum voting.

Mr. SHERMAN. I should like to have the yeas and nays, in order to ascertain whether there is a quorum or not. I think there are Senators here not voting. I call for the yeas and nays.

The yeas and nays were ordered; and being taken, resulted—yeas 20, nays 15; as follows:

YEAS—Messrs. Allison, Booth, Christiancy, Cragin, Dawes, Edmunds, Ferry, Frelinghuysen, Hamilton, Howe, Ingalls, Key, Morrill of Maine, Morrill of Vermont, Oglesby, Paddock, Spencer, Wadleigh, Windom, and Wright—20.

NAYS—Messrs. Bogy, Cockrell, Conkling, Davis, Eaton, Johnston, McCreery, Maxey, Morton, Randolph, Ransom, Robertson, Sherman, Thurman, and Whyte—15.

NOT VOTING—Messrs. Alcorn, Anthony, Barnum, Bayard, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Caperton, Clayton, Conover, Cooper, Dennis, Dorsey, Goldthwaite, Gordon, Hamlin, Harvey, Hitchcock, Jones of Florida, Jones of Nevada, Kelly, Kernan, Logan, McDonald, McMillan, Merrimon, Mitchell, Norwood, Patterson, Sargent, Saulsbury, Sharon, Stevenson, Wallace, West, and Withers—38.

So the motion was agreed to; and the court adjourned until Monday, June 19, at twelve o'clock m.

MONDAY, *June* 19, 1876.

The PRESIDENT *pro tempore* having announced the arrival of the hour fixed, the Senate proceeded to the trial of the impeachment of William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

Messrs. LORD, LYNDE, MCMAHON, JENKS, LAPHAM, and HOAR, of the managers, appeared and were conducted to the seats assigned them.

The respondent appeared with his counsel, Mr. Blair.

The PRESIDENT *pro tempore*. The House of Representatives will be notified as usual.

The Secretary read the journal of the proceedings of the Senate

sitting for the trial of the impeachment of William W. Belknap on Saturday last.

The PRESIDENT *pro tempore*. The Senate is now ready to proceed with the trial. The Secretary will report the pending motion.

The Secretary read as follows:

Ordered, That this cause be now continued until some convenient day in the month of November next.

Mr. Manager LORD. Mr. President, in regard to the application of the defendant to adjourn the trial to November next, the managers have reported to the House the proceedings in the court of impeachment on Saturday last; the House has taken no action in the premises; and the managers therefore leave the question of such postponement with the court.

The PRESIDENT *pro tempore*. The pending question is on the motion submitted by the counsel for the accused. The Secretary will again report the motion.

The Secretary read as follows:

Ordered, That this cause be now continued until some convenient day in the month of November next.

Mr. INGALLS. Mr. President, I should like to hear from the managers upon the question of the power of the Senate to sit in trial when the House of Representatives is not in session.

Mr. Manager LORD. Perhaps, Mr. President, it will be sufficient for the managers to say in that regard that the managers are not agreed on that question. Some of us have a very fixed opinion one way, and other managers seem to have as fixed an opinion the other way; and not being agreed among ourselves we perhaps ought not to discuss the question until we can come to some agreement.

I will say further, Mr. President and Senators, that the question which is presented by the Senator has not been fully considered by the managers; it has not been very much discussed by them; but it has been sufficiently discussed to enable us to see that there is this difference of opinion. I think myself that when the question is fully discussed by the managers they will come to a conclusion on the subject unanimously; but perhaps one differing with me might think we should come unanimously to a different conclusion from that which I entertain. I will say for myself that I have no doubt of the power of this court to sit as a court of impeachment after the adjournment of the Congress.

Mr. SHERMAN. What is the date fixed in the order proposed?

Mr. WEST. A "convenient day."

The PRESIDENT *pro tempore*. No specific date is fixed in the motion.

Mr. SHERMAN. If the motion is to be put to the Senate, I desire to have a day fixed.

The order was again read.

Mr. SHERMAN. Is the order open to amendment?

Mr. Manager LORD. Mr. President, allow me one moment. I ought to say in regard to the opinion which I have expressed that I predicate that opinion upon the action of both the Houses. I think that in order to authorize the sitting of this court beyond all question either the House or the Congress should vote to empower the managers to appear before this court in the recess or absence of the House.

Mr. SHERMAN. I move that the galleries be cleared so that the Senate may consult on this question.

The motion was agreed to.

Mr. Manager LORD. Mr. President, may I say one other word before the result of the motion is announced? I ought to say in furtherance of the view which I have presented, that the question has been settled in the State of New York, the State in which I reside, and I, of course, would naturally be influenced somewhat by the decision. In the case of Judge Barnard the trial was had at Saratoga after the adjournment of the Legislature; and in the recent impeachment trial in Virginia the same course was taken: the impeachment was not tried until after the adjournment of the Legislature. I am also reminded that as far back as 1853 when Mr. Mather, a canal commissioner, was impeached in New York, he was tried after the Legislature adjourned. In regard to the English authorities they seem on the whole to warrant the proposition that the House of Lords may proceed as a court of impeachment after the adjournment of the Parliament.

The PRESIDENT *pro tempore*. The Sergeant-at-Arms will clear the galleries and close the doors.

Mr. HOWE. I move to reconsider the vote ordering the clearing the galleries

Several SENATORS. O, no; let us settle it.

Mr. HOWE. Let us settle it in open session. I ask for the yeas and nays.

Mr. SHERMAN. Let the order be executed first.

Mr. HOWE. Why so?

Mr. SHERMAN. After the order is made we cannot proceed to do anything until the order is executed.

Mr. CONKLING. Can we not reconsider it?

Mr. SHERMAN. The order should first be executed. The order can only be suspended by the Senate, not by a single Senator.

The PRESIDENT *pro tempore*. The motion to reconsider is in order, and the Chair was about putting the question pending the clearing of the galleries. If the Senate concurs in the motion to reconsider, it arrests the order to clear the galleries. The Senator from Wisconsin moves that the vote by which the Senate ordered the galleries to be cleared be reconsidered, upon which the yeas and nays have been asked.

Mr. THURMAN. If we have an open session there can be no debate unless the rules are suspended.

Mr. CONKLING. If we are consulting it is not so. The rule says that Senators may be heard when consultations take place; but it does not say that the galleries must be cleared in case of consultation.

Mr. THURMAN. I ask that the rule be read.

Mr. CONKLING. This is an open consultation that is proposed.

Mr. THURMAN. I have no objection if that is understood; but the rule is as I have stated. I ask that the rule be read.

The Chief Clerk read from Rule 23, as follows:

All the orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, and without debate, subject, however, to the operation of Rule 6, except when the doors shall be closed for deliberation, and in that case no member shall speak more than once on one question and for not more than ten minutes on an interlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate; but a motion to adjourn may be decided without the yeas and nays unless they be demanded by one-fifth of the members present.

The PRESIDENT *pro tempore*. There cannot be any debate in open session unless the rule be suspended.

Mr. SHERMAN. I think the motion to reconsider had better be withdrawn.

Mr. SARGENT. I suggest that the order should be executed. The doors are neither open nor closed now. They had better be closed.

The PRESIDENT *pro tempore*. The Senator from Wisconsin has moved to reconsider the vote by which the Senate ordered the galleries to be cleared, on which the yeas and nays have been ordered. The Secretary will call the roll.

The question being taken by yeas and nays, resulted—yeas 19, nays 24; as follows:

YEAS—Messrs. Alcorn, Booth, Cockrell, Conkling, Dawes, Eaton, Ferry, Hamilton, Howe, Johnston, Jones of Florida, Kernan, Norwood, Randolph, Ransom, Wallace, West, Windom, and Withers—19.

NAYS—Messrs. Allison, Bogy, Caperton, Clayton, Davis, Edmunds, Frelinghuysen, Ingalls, Kelly, Key, Logan, McCreery, Maxey, Morrill of Maine, Morrill of Vermont, Morton, Paddock, Robertson, Sargent, Sherman, Stevenson, Thurman, Wadleigh, and Wright—24.

NOT VOTING—Messrs. Anthony, Barnum, Bayard, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Conover, Cooper, Cragin, Dennis, Dorsey, Goldthwaite, Gordon, Hamlin, Harvey, Hitchcock, Jones of Nevada, McDonald, McMillan, Merrimon, Mitchell, Oglesby, Patterson, Saulsbury, Sharon, Spencer, and Whyte—30.

The PRESIDENT *pro tempore*. The Senate refuses to reconsider its order. The galleries will be cleared and the doors closed.

The Senate thereupon proceeded to deliberate.

The floor and galleries having been cleared and the doors closed,

The Senate proceeded to consider the order submitted by the counsel for the respondent.

On motion of Mr. THURMAN, it was

Ordered, That the application of the respondent for postponement of the time for proceeding with trial be overruled.

On motion of Mr. EDMUNDS, the Senate proceeded to consider the question of filing the paper read on the 16th instant by Mr. Black, of counsel for the respondent, assigning the reasons why the respondent declines to answer the merits of the articles of impeachment as required by the order of the Senate adopted on the 6th instant; which paper Mr. Black had requested to have placed on file.

Mr. SHERMAN submitted the following order for consideration:

Ordered, That the paper presented by the defendant on the 16th instant be filed in this cause; and the defendant having failed to answer to the merits within ten days allowed by the order of the Senate of the 6th instant, the trial shall proceed on the 6th of July next as upon a plea of not guilty.

Mr. THURMAN moved to amend the order of Mr. SHERMAN by inserting after the word "be" and before "filed" the word "not."

Mr. THURMAN called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 24, nays 24; as follows:

YEAS—Messrs. Bogy, Caperton, Cockrell, Davis, Edmunds, Goldthwaite, Hamilton, Johnston, Kelly, Kernan, Key, McCreery, Maxey, Morrill of Maine, Morton, Norwood, Randolph, Robertson, Saulsbury, Stevenson, Thurman, Wadleigh, Wallace, and Withers—24.

NAYS—Messrs. Alcorn, Allison, Booth, Christiancy, Conkling, Cragin, Dawes, Eaton, Ferry, Frelinghuysen, Howe, Ingalls, Jones of Florida, Jones of Nevada, Logan, Oglesby, Paddock, Patterson, Ransom, Sargent, Sherman, West, Windom, and Wright—24.

NOT VOTING—Messrs. Anthony, Barnum, Bayard, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Clayton, Conover, Cooper, Dennis, Dorsey, Gordon, Hamlin, Harvey, Hitchcock, McDonald, McMillan, Merrimon, Mitchell, Morrill of Vermont, Sharon, Spencer, and Whyte—25.

So the amendment was not agreed to.

The question recurring on the order proposed by Mr. SHERMAN,

Mr. HOWE demanded a division of the order; and the question being stated to be on the first clause thereof, namely—

Ordered, That the paper presented by the defendant on the 16th instant be filed in this cause—

Mr. HOWE called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 26, nays 24; as follows:

YEAS—Messrs. Alcorn, Allison, Christiancy, Clayton, Conkling, Cragin, Dawes, Eaton, Ferry, Frelinghuysen, Goldthwaite, Hamlin, Howe, Ingalls, Jones of Florida, Jones of Nevada, Logan, Oglesby, Paddock, Patterson, Ransom, Sargent, Sherman, West, Windom, and Wright—26.

NAYS—Messrs. Bogy, Booth, Caperton, Cockrell, Davis, Edmunds, Hamilton, Johnston, Kelly, Kernan, Key, McCreery, Maxey, Morrill of Vermont, Morton, Norwood, Randolph, Robertson, Saulsbury, Stevenson, Thurman, Wadleigh, Wallace, and Withers—24.

NOT VOTING—Messrs. Anthony, Barnum, Bayard, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Conover, Cooper, Dennis, Dorsey, Gorgon, Harvey, Hitchcock, McDonald, McMillan, Merrimon, Mitchell, Morrill of Maine, Sharon, Spencer, and Whyte—23.

So it was

Ordered, That the paper presented by the defendant on the 16th instant be filed in this cause.

Which paper is in the following words:

In the Senate of the United States sitting as a court of impeachment.

THE UNITED STATES OF AMERICA }
vs. }
WILLIAM W. BELKNAP. }

And now, to wit, this 16th day of June, 1876, the said William W. Belknap comes into court, and being called upon to plead further to the said articles of impeachment, doth most humbly and with profoundest respect represent and show to this honorable court that on the 17th day of April last past he did plead to the said articles of impeachment, and in his said plea did allege that at the time when the House of Representatives of the United States ordered the said impeachment, and at the time when the said articles of impeachment were exhibited at the bar of the Senate against him, the said Belknap, he, the said Belknap, was and ever thereafter had been not a public officer of the United States, but a private citizen of the United States and of the State of Iowa; and that the plea aforesaid and all the matters and things therein contained were by him, said Belknap, fully verified by proofs, namely, by admissions of the said House of Representatives before said court; and the said Belknap further represents and shows to the court here that the truth and sufficiency of the plea pleaded by him as aforesaid were thereupon debated by the managers of the said House of Representatives and the counsel of this respondent, and thereupon submitted to this court for its determination and judgment thereon; and that such proceedings were thereupon had in this court on that behalf in this cause; that afterward, to wit, on the 29th day of May last past, the members of this court, to wit, the Senators of the United States sitting as a court of impeachment as aforesaid, did severally deliver their several judgments, opinions, and votes on the truth and sufficiency in law of the said plea, when and whereby it was made duly to appear that only thirty-seven Senators concurred in pronouncing said plea insufficient or untrue; whereas twenty nine Senators sitting in said court, by their opinions and votes, affirmed and declared their opinion to be that said plea was sufficient in law and true in point of law; so that the said Belknap in fact saith that, on the day and year last aforesaid, twenty-nine Senators sitting in said court declared therein that the said Belknap having ceased to be a public officer of the United States by reason of his resignation of the office of Secretary of War of the United States before proceedings in impeachment were commenced against him by the House of Representatives of the United States, the Senate cannot take jurisdiction of this cause; and that seven Senators did not vote upon said question, and only thirty-seven Senators, by their votes, declared their opinion to be that the Senate could take jurisdiction of said cause. And afterward thirty-seven Senators sitting in said court, and no more, concurred in a resolution declaring that "in the opinion of the Senate William W. Belknap is amenable to trial on impeachment for acts done as Secretary of War, notwithstanding his resignation of said office," and that twenty-nine of said Senators sitting in said court, by their votes, affirmed and declared their opinion to be to the contrary thereof. And afterward, on the day and year last aforesaid, it was proposed in said court that the President *pro tempore* of the said Senate should declare the judgment of the said Senate, sitting as aforesaid, to be that said plea of said respondent should be held for naught, and a vote was taken upon said proposition; and, as said vote showed, two-thirds of the said Senators present did not concur therein; but, on the contrary thereof, only thirty-six Senators did concur therein, and twenty-seven Senators then and there present, and voting on said proposition, did by their votes dissent from and vote against said proposition. All of which appears more fully and at large upon the record of this court in this cause, to which record he, said Belknap, prays leave to refer.

Therefore the said Belknap, referring to the Constitution of the United States, article 1, section 3, clause 6, which provides that "no person shall be convicted without the concurrence of two-thirds of the members present," (meaning on trial on impeachment,) avers that his said plea has not been overruled or held for naught by the Senate sitting as aforesaid, no such judgment having been concurred in by two-thirds of the Senators sitting in said court and voting thereon; but, on the contrary thereof, as the vote aforesaid fully shows, the said plea of the said respondent was sustained, and its truth in fact and sufficiency in law duly affirmed by the said Senate sitting as aforesaid, more than one-third of the Senators of said Senate, sitting as aforesaid, having by their votes so declared, to wit, twenty-seven Senators as aforesaid, and said twenty-seven Senators having by their votes declared and affirmed their opinion to be that said plea of said respondent was true in fact and was sufficient in law to prevent the Senate sitting as aforesaid from taking further cognizance of said articles of impeachment.

Wherefore the respondent avers that he has already been substantially acquitted by the Senate sitting as aforesaid; and that he, the said respondent, is not bound further to answer said articles of impeachment; the said order requiring this respondent to answer over not having been made with the concurrence of two-thirds of the said Senators sitting as aforesaid and voting upon the question of the passage of said order; and said order having been passed with the concurrence only of less than two-thirds of the said Senators sitting as aforesaid, and voting on the question of making and passing said order, the said order ought not to have been entered of record as an order of said court of impeachment in this cause; and said order appearing upon the whole record of said cause to be null and void as an order of said court.

And the said respondent prays the court now here, as he has before formally moved said court, to vacate said order; and the said respondent hereby prays said court that he may be hence dismissed.

WILLIAM W. BELKNAP.
MATT. H. CARPENTER,
J. S. BLACK,
MONTGOMERY BLAIR,
Of Counsel for said Respondent.

The question recurring on the last clause of the order of Mr. SHERMAN, namely—

And the defendant having failed to answer to the merits within ten days allowed by the order of the Senate of the 6th instant, the trial shall proceed on the 6th of July next as upon a plea of not guilty—

Mr. ALLISON moved to amend by striking out "6th of July" and in lieu thereof inserting "19th of November."

Mr. CHRISTIANCY called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 9, nays 37; as follows:

YEAS—Messrs. Allison, Christiancy, Clayton, Jones of Nevada, Logan, Morrill of Maine, Wadleigh, Windom, and Wright—9.

NAYS—Messrs. Alcorn, Bogy, Booth, Cockrell, Conkling, Cragin, Davis, Dawes, Eaton, Edmunds, Ferry, Frelinghuysen, Goldthwaite, Hamilton, Howe, Ingalls, Johnston, Jones of Florida, Kelly, Kernan, Key, McCreery, Maxey, Morrill of Vermont, Morton, Norwood, Oglesby, Paddock, Patterson, Ransom, Robertson, Sargent, Saulsbury, Sherman, Stevenson, Wallace, and Withers—37.

NOT VOTING—Messrs. Anthony, Barnum, Bayard, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Caperton, Conover, Cooper, Dennis, Dorsey, Gordon, Hamlin, Harvey, Hitchcock, McDonald, McMillan, Merrimon, Mitchell, Randolph, Sharon, Spencer, Thurman, West, and Whyte—27.

So the amendment was rejected.

The question recurring on the second clause of the order of Mr. SHERMAN,

Mr. MORTON moved to amend the clause by inserting at the end thereof the following words:

Provided, That the impeachment can only proceed in the presence of the House of Representatives.

Mr. FRELINGHUYSEN moved to amend the amendment by striking out "in the presence of the House of Representatives" and in lieu thereof inserting "while Congress is in session."

The amendment to the amendment was agreed to.

The question recurring on the amendment of Mr. MORTON as amended,

Mr. MORTON asked, and obtained, leave to withdraw the amendment.

The question again recurring on the second clause of the order proposed by Mr. SHERMAN,

Mr. CONKLING moved to amend the clause by inserting at the end thereof the words:

Provided, That the impeachment can only proceed while Congress is in session.

Mr. CONKLING called for the yeas and nays on this amendment, and they were ordered; and being taken, resulted—yeas 21, nays 19; as follows:

YEAS—Messrs. Alcorn, Allison, Clayton, Conkling, Dawes, Ferry, Frelinghuysen, Hamlin, Ingalls, Logan, Maxey, Morrill of Vermont, Oglesby, Paddock, Patterson, Randolph, Sargent, Sherman, Spencer, Wadleigh, and Wallace—21.

NAYS—Messrs. Bogy, Booth, Christiancy, Cockrell, Cragin, Davis, Eaton, Edmunds, Goldthwaite, Hamilton, Kelly, Kernan, Key, McCreery, Ransom, Saulsbury, Thurman, Withers, and Wright—19.

NOT VOTING—Messrs. Anthony, Barnum, Bayard, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Caperton, Conover, Cooper, Dennis, Dorsey, Gordon, Harvey, Hitchcock, Howe, Johnston, Jones of Florida, Jones of Nevada, McDonald, McMillan, Merrimon, Mitchell, Morrill of Maine, Morton, Norwood, Robertson, Sharon, Stevenson, West, Whyte, and Windom—33.

So the amendment was agreed to.

Mr. MORTON moved further to amend the last clause of the order proposed by Mr. SHERMAN by inserting at the end thereof the words:

And in the presence of the House of Representatives.

Mr. SAULSBURY moved to amend the amendment by inserting at the end thereof, "or its managers."

Mr. THURMAN moved to lay the second clause of the order of Mr. SHERMAN on the table, and called for the yeas and nays on this motion, and they were ordered; and being taken, resulted—yeas 21, nays 26; as follows:

YEAS—Messrs. Bogy, Caperton, Cockrell, Davis, Dawes, Eaton, Hamilton, Johnston, Jones of Florida, Kelly, Kernan, Key, McCreery, Norwood, Randolph, Ransom, Saulsbury, Stevenson, Thurman, Wallace, and Withers—21.

NAYS—Messrs. Allison, Booth, Christiancy, Clayton, Conkling, Cragin, Edmunds, Ferry, Frelinghuysen, Hamlin, Howe, Ingalls, Logan, Maxey, Morrill of Maine, Morrill of Vermont, Morton, Paddock, Patterson, Sargent, Sherman, Spencer, Wadleigh, West, Windom, and Wright—26.

NOT VOTING—Messrs. Alcorn, Anthony, Barnum, Bayard, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Conover, Cooper, Dennis, Dorsey, Goldthwaite, Gordon, Harvey, Hitchcock, Jones of Nevada, McDonald, McMillan, Merrimon, Mitchell, Oglesby, Robertson, Sharon, and Whyte—26.

So the motion to lay on the table was not agreed to.

The question recurring on the amendment of Mr. SAULSBURY, it was rejected.

The question recurring on the amendment of Mr. MORTON, to insert at the end of the second clause of the order proposed by Mr. SHERMAN the words "and in the presence of the House of Representatives,"

Mr. MORTON called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 9, nays 28; as follows:

YEAS—Messrs. Allison, Conkling, Ferry, Morrill of Vermont, Morton, Sargent, Spencer, West, and Windom—9.

NAYS—Messrs. Bogy, Booth, Caperton, Christiancy, Clayton, Cockrell, Cragin, Davis, Dawes, Edmunds, Frelinghuysen, Hamilton, Johnston, Kelly, Kernan, Key, McCreery, Maxey, Morrill of Maine, Norwood, Randolph, Ransom, Sherman, Saulsbury, Stevenson, Thurman, Wadleigh, and Withers—28.

NOT VOTING—Messrs. Alcorn, Anthony, Barnum, Bayard, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Conover, Cooper, Dennis, Dorsey, Eaton, Goldthwaite, Gordon, Hamlin, Harvey, Hitchcock, Howe, Ingalls, Jones of Florida, Jones of Nevada, Logan, McDonald, McMillan, Merrimon, Mitchell, Oglesby, Paddock, Patterson, Robertson, Sharon, Wallace, Whyte, and Wright—36.

So the amendment was rejected.

The question recurring on the second clause of the order of Mr. SHERMAN, as amended, namely—

And the defendant having failed to answer to the merits within ten days allowed by the order of the Senate of the 6th instant, the trial shall proceed on the 6th of July next as upon a plea of not guilty: *Provided*, The impeachment can only proceed while Congress is in session—

Mr. THURMAN called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 21, nays 16; as follows:

YEAS—Messrs. Allison, Booth, Clayton, Conkling, Cragin, Dawes, Frelinghuysen, Johnston, Kelly, Key, Maxey, Morrill of Maine, Morrill of Vermont, Oglesby, Paddock, Patterson, Sargent, Sherman, Spencer, Wadleigh, and West—21.

NAYS—Messrs. Bogy, Caperton, Christiancy, Cockrell, Davis, Edmunds, Ferry, Howe, Kernan, McCreery, Norwood, Randolph, Ransom, Stevenson, Thurman, and Windom—16.

NOT VOTING—Messrs. Alcorn, Anthony, Barnum, Bayard, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Conover, Cooper, Dennis, Dorsey, Eaton, Goldthwaite, Gordon, Hamilton, Hamlin, Harvey, Hitchcock, Ingalls, Jones of Florida, Jones of Nevada, Logan, McDonald, McMillan, Merrimon, Mitchell, Morton, Robertson, Saulsbury, Sharon, Wallace, Whyte, Withers, and Wright—36.

So the second clause of Mr. SHERMAN'S order, as amended, was agreed to.

Mr. EDMUNDS submitted the following order; which was considered by unanimous consent, and agreed to:

Ordered, That the Secretary issue subpœnas that may be applied for by the respondent for such witnesses to be summoned at the expense of the United States as shall be allowed by a committee to consist of Senators FRELINGHUYSEN, THURMAN, and CHRISTIANCY; and that subpœnas for all other witnesses for the respondent shall contain the statement that the witnesses therein named are to attend upon the tender on behalf of the respondent of their lawful fees.

On motion by Mr. EDMUNDS, the doors were opened.

The PRESIDENT *pro tempore* announced that the Senate sitting for the trial of the impeachment in close session had agreed to the following orders:

Ordered, That the paper presented by the defendant on the 16th instant be filed in this cause; and the defendant having failed to answer to the merits within ten days allowed by the order of the Senate of the 6th instant, the trial shall proceed on the 6th of July next as upon a plea of not guilty: *Provided*, That the impeachment can only proceed while Congress is in session.

Ordered, That the Secretary issue subpœnas that may be applied for by the respondent for such witnesses to be summoned at the expense of the United States as shall be allowed by a committee to consist of Senators FRELINGHUYSEN, THURMAN, and CHRISTIANCY; and that subpœnas for all other witnesses for the respondent shall contain the statement that the witnesses therein named are to attend upon the tender on behalf of the respondent of their lawful fees.

On motion of Mr. HOWE, the Senate sitting for the trial of the impeachment adjourned to July 6.

THURSDAY, *July* 6, 1876.

The PRESIDENT *pro tempore*. The hour of twelve o'clock having arrived, pursuant to the order of the Senate made on June 19, the legislative and executive business of the Senate will be suspended, and the Senate will proceed to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

Messrs. LORD, LYNDE, MCMAHON, JENKS, LAPHAM, and HOAR, of the managers on the part of the House of Representatives, appeared, and were conducted to the seats assigned them.

The respondent appeared with his counsel, Messrs. Blair, Black, and Carpenter.

The PRESIDENT *pro tempore*. The Secretary will notify the House of Representatives that the Senate is ready to proceed with the trial and that seats are provided for their accommodation.

The Secretary read the journal of proceedings of the Senate sitting for the trial of the impeachment of William W. Belknap of Monday, June 19, 1876.

The PRESIDENT *pro tempore*. The Senate in trial is now ready to proceed. The Secretary will read the order passed by the Senate on the 19th of June.

The Secretary read as follows:

Ordered, That the paper presented by the defendant on the 16th instant be filed in this cause; and the defendant having failed to answer to the merits within ten days allowed by the order of the Senate of the 6th instant, the trial shall proceed on the 6th of July next as upon a plea of not guilty: *Provided*, That the impeachment can only proceed while Congress is in session.

The PRESIDENT *pro tempore*. The Senate is now ready to proceed with the trial. The Senate will now hear the managers.

Mr. Manager LYNDE. Mr. President, before opening we should like to know if our witnesses are present, and we therefore ask that the list of witnesses on behalf of the Government shall be called.

The PRESIDENT *pro tempore*. If there be no objection, the Secretary will read the return of the officer to whom the subpœnas were directed.

Mr. Manager LYNDE. Mr. President, we ask that the list be read, and that the witnesses may answer to their names if they are present, so that we may ascertain whether they are present. We simply ask that their names be called.

The PRESIDENT *pro tempore*. If there be no objection the Secretary will call the names of the witnesses who have been summoned to attend on this trial. The witnesses present will answer in audible tone so that the Secretary may note who are present and who are absent. The Secretary will call the names.

Mr. CONKLING. If it be not out of order I inquire of the Chair whether any place has been assigned to the witnesses, or any order given admitting them to the floor or any other position sufficiently near to enable them to answer when their names are called?

The PRESIDENT *pro tempore*. The Chair has directed the Sergeant-at-Arms to admit all the witnesses on the floor of the Senate. The Chair understands that several are present. For the purpose of convenience the Chair will state to the witnesses who are present that they will rise when responding to their names that they may be seen as well as heard. The Secretary will proceed to call the names of the witnesses.

The Chief Clerk called the following names:

E. T. Bartlett responded "present;" J. S. Evans, no response; Caleb P. Marsh responded present; John I. Fisher, no response; George W. Moss, no response; J. S. Dodge, no response; J. C. Young, no response; W. F. Moody, no response; H. T. Crosby, no response; W. T. Barnard, no response; Leonard Whitney, no response; E. M. Lawton responded present; James R. Roche, no response; W. H. Barnard, no response; W. B. Hazen, no response; Irwin McDowell responded present; Whitelaw Reid, no response; E. V. Smalley, no response; A. R. Spofford, no response; H. F. Vail, no response; Mr. King, no response; Joseph A. Kernan, no response; William H. Carr, no response; A. H. Farmer, no response; Charles N. Vilas, no response; Governor Ralph Lowe, no response.

Mr. Manager LYNDE. Mr. President, we now ask for an order of the Senate for an attachment for such witnesses as have been subpœnaed and personally served and have not presented themselves this morning and whom we have not agreed to notify. If the Senate will grant this order we ask permission to have the order executed as the managers may require: an order allowing us to issue an attachment to certain witnesses who have been personally summoned.

The PRESIDENT *pro tempore*. The manager will reduce his motion to writing.

Mr. CONKLING. May I inquire, without reducing it to writing, whether there is an understanding with some of the absentees by which they are to appear when wanted, so that the present motion does not include all those who have failed to answer?

Mr. Manager LYNDE. There is such an understanding with several witnesses who are in the city and who are to be notified before they are required, and against such we shall ask for no attachment.

Mr. EDMUNDS. You will have to make your list in such a way as to cover the very persons you wish attached.

Mr. MCMILLAN. Mr. President, is there a proper return of service of these witnesses by the Sergeant-at-Arms on the record?

The PRESIDENT *pro tempore*. There is. The Chair was about to have the returns read. They will be read if desired.

Mr. FRELINGHUYSEN and others. It is not necessary.

Mr. MITCHELL. I offer the following order——

The PRESIDENT *pro tempore*. The Secretary will report the order.

The Chief Clerk read as follows:

Ordered, That attachments issue for all witnesses regularly subpœnaed on the part of the prosecution who have not answered to the roll-call and with whom there is no understanding that they are to be notified by the managers when required to be present.

The PRESIDENT *pro tempore*. Is the Senate ready for the question?

Mr. CONKLING. I move to amend the order by inserting the names of such witnesses as are described. It is not in order for me to debate, but I think the amendment will sufficiently indicate the objection, and the Senator from Oregon may accept it.

Mr. MITCHELL. I accept the amendment.

The PRESIDENT *pro tempore*. The question is on the order, as amended.

Mr. EDMUNDS. Let us hear the names read.

The PRESIDENT *pro tempore*. The names will be read.

Mr. Manager LYNDE. We are not prepared to furnish all the names at this time. The list shows the absentees, but we cannot state to the Senate at this time just the persons to whom leave has been given to be absent this morning.

Mr. EDMUNDS. I move to postpone the further consideration of the order submitted by my friend, then, until to-morrow, so that the managers can supply the names, if they are not ready to do so now.

The PRESIDENT *pro tempore*. Is there objection to the postponement of the order submitted by the Senator from Oregon?

Mr. CONKLING. I want to make an inquiry before I omit to object to it. I want to know whether it be true that the managers cannot specify the names of any witnesses whose attendance they want to-day. If so, I submit if it is in order it is enough to attach those witnesses now, and the others, whose names they may not be able to present until to-morrow, can be attached when that day comes; but I do not want to lose this day by the absence of witnesses, and I should like to know whether there are witnesses in the city who can be brought here in response to an immediate summons or order of attachment.

Mr. EDMUNDS. I wish to ask the managers, if I may do so without submitting it in writing, whether they have any witnesses in attendance to proceed with to-day?

Mr. Manager LYNDE. We have all the witnesses that will be necessary for the purpose of the trial to-day.

Mr. EDMUNDS. So understanding, Mr. President, I think my motion is correct.

Mr. CONKLING. I make no objection if it does not postpone the trial.

The PRESIDENT *pro tempore*. The Senator from Vermont moves the postponement of the order submitted by the Senator from Oregon [Mr. MITCHELL] until to-morrow. Is there objection? The Chair hears no objection; and it is so postponed.

Mr. CARPENTER. I notice on the list of witnesses read by the prosecution here this morning the names of nine witnesses not on the list furnished to us. I should like to know what is the explanation of that.

Mr. Manager LYNDE. We answer the question by stating that we

found their materiality after the list was made out which was presented to the counsel on the other side. The order of the Senate was that we should give to the counsel on the other side a list of the witnesses who we knew at that time would be material, and whom we expected to use in this trial.

Mr. CARPENTER. Then furnishing the names of two or three would have answered the order, and the rest could have been put in subsequently. I supposed, Mr. President, that the order meant something, that it meant the witnesses whose names were not furnished to us before the trial were not to be called and used against us.

Mr. CONKLING. How many unfurnished witnesses are there?

Mr. CARPENTER. Nine; and some names we did not catch, so as to be able to make the comparison.

Mr. Manager LYNDE. Mr. President and Senators——

Mr. CARPENTER. If the counsel will permit me a moment, I will state an additional fact which I have just learned from the Sergeant-at-Arms, that he has not subpœnaed either one of those nine and never heard of them before.

Mr. Manager LYNDE. Those witnesses have been subpœnaed to appear before the managers then. Of course we should not ask for attachments as against any witnesses who have not been subpœnaed by the Sergeant-at-Arms to attend at this trial.

Mr. President and Senators, I feel it is necessary for me, before stating to the Senate the facts that we expect to prove in this case, to ask the indulgence of the Senate for a few moments upon the paper which was filed by the counsel in behalf of the accused at the last sitting of the court. I deem it necessary because of the bearing and influence which this paper may have in the trial of this cause. I can see no purpose or object in the filing of this paper, unless it was to influence the hearing and the final decision of the cause. I therefore ask to be heard for a few moments upon some of the allegations in this paper. The second clause of this paper reads:

> Therefore the said Belknap, referring to the Constitution of the United States, article 1, section 3, clause 6, which provides that "no person shall be convicted without the concurrence of two-thirds of the members present," (meaning on trial on impeachment,) avers that his said plea has not been overruled or held for naught by the Senate sitting as aforesaid, no such judgment having been concurred in by two-thirds of the Senators sitting in said court and voting thereon; but on the contrary thereof, as the vote aforesaid fully shows, the said plea of the said respondent was sustained, and its truth in fact and sufficiency in law duly affirmed by the said Senate sitting as aforesaid, more than one-third of the Senators of said Senate, sitting as aforesaid, having by their votes so declared, to wit, twenty-seven Senators as aforesaid, and said twenty-seven Senators having by their votes declared and affirmed their opinion to be that said plea of said respondent was true in fact and was sufficient in law to prevent the Senate sitting as aforesaid from taking further cognizance of said articles of impeachment.
>
> Wherefore the respondent avers that he has already been substantially acquitted by the Senate sitting as aforesaid.

Senators, we supposed that this question of jurisdiction had been finally and definitely settled; that it was *res adjudicata;* that it could not again be raised in the trial of this cause without an application for a rehearing upon that question. It is a rule in all legislative bodies, in all courts, that questions are decided by a majority vote, except where some provision of the Constitution, some statute law, or some rule of the court requires a larger or a different vote to decide the question. It is evident from this plea that the question of jurisdiction was decided by a majority of the Senate. The clause of the Constitution which is stated in this plea is that "no person shall be convicted without the concurrence of two-thirds of the members present." Is it contended by any one that a decision of the question of jurisdiction, let it be decided as it may, determines the question of conviction? Have the Senate, by overruling the plea of the defendant, already convicted the accused? Would he stand convicted if that vote had been a two-thirds vote? Should we be spared the trial that we are now about to enter upon by a mere decision of the Senate, by a two-thirds vote, that the Senate had jurisdiction and had a right to try this cause? And yet, if it be true that where more than one-third vote against the jurisdiction of the court it virtually amounts to an acquittal, then it must follow that if two-thirds had voted in favor of the jurisdiction it would amount to conviction, and no further trial would be necessary.

Mr. SHERMAN. Mr. President, I respectfully object to a discussion of the question now being discussed by the managers, it having already been decided by the Senate. I should like the question to be submitted to the Senate as to whether the point now under discussion can be discussed at this time. The order is that we shall proceed to the trial of this case.

Mr. Manager LYNDE. Mr. President, if I can be heard upon the question raised by the Senator, I will state that I am not discussing this question for the purpose of getting any further action of the Senate upon it at this time. There has been introduced here a paper by the counsel on the other side, and I am merely discussing it for the purpose of showing that in the consideration of this case, and of the evidence which will be submitted, that question has already been definitely decided by the Senate and is binding upon every Senator and the parties in the cause. But I do not care, Mr. President, to dwell upon this question. I will, therefore, leave it for the purpose of considering the points which we shall make on the trial of this cause.

Mr. HOWE. May I ask, for information, if a question of order was made on the managers on the part of the House of Representatives by the Senator from Ohio?

Mr. SHERMAN. Yes; I respectfully objected to the discussion of a question already decided upon the record, and asked that the order of the Senate that the case be proceeded to trial be executed.

Mr. HOWE. If the objection was presented in the shape of a question of order, I think it ought to be settled.

The PRESIDENT *pro tempore.* The Chair understands that the Senator from Ohio raised the point that the managers should not proceed in discussing the question to which he has referred. The manager then waived further discussion, so that the Chair did not put the question. Otherwise the Chair would have put to the Senate the question whether the manager should be allowed to continue. He will now put the question, if desired, "Shall the manager continue the discussion on the point raised by the Senator from Ohio?"

Mr. SHERMAN. Unless the manager desires to continue that discussion, I will not press it.

The PRESIDENT *pro tempore.* The manager stated that he did not desire to continue the discussion, but would go on with the pending question, as the Chair understood. If so, the Chair will not put the question to the Senate.

Mr. CARPENTER. And it will not be considered as settled at all by what has taken place this morning?

The PRESIDENT *pro tempore.* The Chair does not understand that anything has been settled by the Senate except this order which has been read.

Mr. Manager LYNDE. Mr. President and Senators, in considering this case and in opening this case to the Senate I shall take the liberty of giving in a few words, and occupying as little time as possible, something of the history of the sutlers' service in this country. The service of post-traders differs in some respects from the sutlers' service. The sutler is recognized as an officer of the Army of the United States in our laws establishing the Articles of War and the rules and regulations of the Army, and has been an officer from the very foundation of our Government until the year 1866 when the office was abolished.

At the Continental Congress sitting September 20, 1776, articles were adopted for the better government of the troops of the United States which contain clauses in regard to sutlers similar to the clauses that were afterward adopted in the Articles of War of 1806 and have been continued down to the year 1866, carefully providing against extortion on the part of sutlers, or extortion on the part of the officers as against the sutlers, and requiring—

> That officers commanding in forts, barracks, or garrisons of the United States are hereby required to see that persons permitted to sutle shall supply the soldiers with good and wholesome provisions at the market price, as they shall be answerable for their neglect.

This rule is of course familiar to every gentleman who has been in the military service of the United States. Care has been taken from the very foundation of our Government that the soldier should be protected against the extortion of the sutler and those who are permitted to supply them with provisions and other articles in that service. In 1866 the twenty-fifth section of the act of Congress approved July 28 provides:

> SEC. 25. *And be it further enacted.* That the office of sutler in the Army and at military posts is hereby abolished, and the Subsistence Department is hereby authorized and required to furnish such articles as may from time to time be designated by the inspectors-general of the Army, the same to be sold to officers and enlisted men at cost prices, and if not paid for when purchased, a true account thereof shall be kept, and the amount due the Government shall be deducted by the paymaster at the payment next following such purchase: *Provided,* That this section shall not go into effect until the 1st day of July, 1867.

Under that law, under date of May 24, 1867, the following general order was issued from the War Department:

> HEADQUARTERS OF THE ARMY,
> ADJUTANT-GENERAL'S OFFICE,
> *Washington, May 24, 1867.*
>
> General Orders No. 58.]
>
> So much of paragraph II, General Orders No. 6, dated War Department, January 26, 1867, as is inconsistent with the following is, by direction of the Secretary of War, revoked:

I will read first the order of the 26th of January, 1867:

> I. Section 25 of the act approved July 28, 1866, entitled "An act to increase and fix the military peace establishment of the United States," enacts: "That the office of sutler in the Army and at military posts is hereby abolished."

Reciting the act:

> II. In accordance with the provisions of this act the warrants of all sutlers to the Army will terminate July 1, 1867, and after that date no sutler will be allowed, under any circumstances, to keep or sell goods of any description within the limits of any military post, camp, or station, or on any military reserve. Commanding officers are made responsible for the strict execution of this order.
>
> By order of the Secretary of War:
>
> E. D. TOWNSEND,
> *Assistant Adjutant-General.*

On the 15th of April, 1867, the following resolution of Congress was published for the information and government of all concerned:

> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Commanding General of the Army shall be authorized to permit a trading establishment to be maintained, after the 1st day of July, 1867, at any military post on the frontier not in the vicinity of any city or town, and situated at any point between the one hundredth meridian of longitude west from Greenwich and the eastern boundary of the State of California, when, in his judgment, such establishment is needed for the accommodation of emigrants, freighters, and other citizens: *Provided,* That after the Commissary Department shall be prepared to supply stores to soldiers as required by law, no trader permitted to remain at such post shall sell any goods kept by the Commissary Department

to any enlisted men: *And provided further*, That such traders shall be under protection and military control as camp-followers.

Approved March 30, 1867.

On the 24th of May the following order was issued:

So much of paragraph II, General Orders No. 6, dated War Department, January 26, 1867, as is inconsistent with the following is, by direction of the Secretary of War, revoked.

The Commissary-General of Subsistence having reported that no special appropriation has been made by Congress to enable the Subsistence Department to carry into effect section 25 of the act of Congress approved July 28, 1866, which abolishes the office of sutler, and requires said Department to furnish for sale to officers and soldiers such articles (heretofore supplied by sutlers) as may be designated by the Inspector-General of the Army; and in view of the large expenditure of funds necessary to furnish such supplies and the delay which must ensue before an appropriation can be made for this purpose, it is ordered that the sutlers at military posts on the frontier not in the vicinity of any city or town, and situated between the one hundredth meridian of longitude west from Greenwhich and the eastern boundary of the State of California, shall, after the 1st of July, 1867, be retained until further orders as traders at such military posts, under the resolution of Congress approved March 30, 1867, authorizing the Commanding General of the Army to permit traders to remain at certain military posts.

Should the commanding officer of any post included in this order consider the present sutler of his post an unfit person to hold the office of trader, he will forward a report to that effect, through the intermediate commanders, to these headquarters.

By command of General Grant:

E. D. TOWNSEND,
Assistant Adjutant-General.

This was the order which was made in carrying out the resolution of Congress passed in 1867. On the 30th of May, 1867, the following order was issued from the Department:

Whereas it appears from a report of the Commissary-General of Subsistence, that to carry out the provisions of section 25 of the act approved July 28, 1866, entitled "An act to increase and fix the military peace establishment of the United States," which section requires the Subsistence Department to furnish certain articles hitherto sold by sutlers at military posts, will involve the immediate outlay of a large amount of subsistence funds for which no return can be realized for many months;

And whereas no appropriation of funds has been made for that purpose, and the funds appropriated for the subsistence of the Army cannot be diverted from their specific purpose without damage to the public service:

It is therefore ordered that paragraph 2, General Orders No. 6, dated War Department, January 26, 1867, terminating the warrants of all sutlers on the 1st day of July, 1867, be revoked, and sutlers will be permitted to trade with the troops, under the regulations relating to sutlers now in existence, until further orders.

July 19, 1867, the following order was issued from the War Department:

General Orders No. 58, of May 24, 1867, is modified so as to permit any persons, without limit as to number, to trade at the military posts situated between the one hundredth meridian of longitude west from Greenwich and the eastern boundary of the State of California, subject only to such regulations and restrictions as may be imposed by department commanders.

By command of General Grant:

E. D. TOWNSEND,
Assistant Adjutant-General.

On the 22d of August, 1867, the following circular was issued from the War Department:

The intent of General Orders No. 68, of July 19, 1867, is to enable department commanders, if they deem it advisable, to permit the formation of settlements on the military reservations therein designated, by giving unlimited permission to traders to open establishments thereon. They may, therefore, at their discretion, restrict the number of traders to one, or to any greater number. In all cases, however, when permission to trade is given, a written agreement, containing proper stipulations, must be taken from the trader; and explicit provisions must be made therein that no right or title, expressed or implied, to ownership or permanent occupation, is given to any part of the military reservation by the permission to trade thereon.

By command of General Grant:

E. D. TOWNSEND,
Assistant Adjutant-General.

This was the condition of the law and the orders which had been issued from the War Department at the time that William W. Belknap was appointed Secretary of War. His appointment dates, I think, the 13th of October, 1869. On the 15th of July, of the year 1870, in the Army appropriation bill, section 22, Congress enacted:

That from and after the passage of this act the Secretary of War be, and he is hereby, authorized to permit one or more trading establishments to be maintained at any military post on the frontier not in the vicinity of any city or town, when, in his judgment, such establishment is needed for the accommodation of emigrants, freighters, and other citizens; and the persons to maintain such trading establishments shall be appointed by him: *Provided*, That such traders shall be under protection and military control as camp-followers. The joint resolution approved March 30, 1867, to authorize the Commanding General of the Army to permit traders to remain at certain military posts is hereby repealed.

This is the act under which these post-traders have been appointed, under which the post-trader at Fort Sill was appointed. This act bears date the 15th of July, 1870. We shall introduce evidence to show that the letter bearing date the 16th of August, 1870, as appears from the files of the War Department, is signed by Mr. Marsh to Mr. Belknap, soliciting the appointment of post-trader. I would call the attention of the Senate to the fact that there appears, as we shall show, upon the files of the War Department a recommendation from the officers at Fort Sill, indorsed by General Grierson, which was received as appears by the indorsement at the War Department on the 25th of July, 1870, recommending the appointment of John S. Evans and John F. Fisher, the present post-traders, under the firm name of J. S. Evans & Co., at this post, for the post of post-traders under the act. It is evident from this recommendation that the officers at Fort Sill had become advised of the pendency of this act in Congress. It is evident that this recommendation must have been received before the act had passed Congress and received the approval of the President. But it was received at the Department on the 25th July, 1870, which is ten days after the act had been approved by the President authorizing the Secretary of War to make the appointment of post-traders. For some reason, which I am not able to show, this was followed by another recommendation signed by all or most of the officers at Fort Sill, with an indorsement from General Grierson, recommending John S. Evans as post-trader. It would seem probable that the objection to the first recommendation was that it recommended a firm, or two persons constituting a firm, and that this subsequent recommendation was made for the purpose of obviating that difficulty. Mr. Evans sends these recommendations with his own application for the appointment under date of "Philadelphia, August 18, 1870." The Secretary, then, in August, as it would appear by these letters, had before him the recommendation of the officers at Fort Sill with an indorsement of the commanding officer, General Grierson, and also, as it would appear from the date of the letter, the application of Mr. Marsh for this appointment of post-trader.

Now we may not be able to prove, and it is probable that Mr. Marsh in giving his testimony will swear that his application was not made until the latter part of September or the 1st of October for that position. Here stands the contradiction between the date of his application as the letter appears upon the file of the Department and the testimony which he will give as to when the application was made; and in considering that testimony I would call the attention of the Senate to the fact that the letter from Mr. Marsh purporting to be written on the 16th of August has no indorsement of its receipt at the War Department; that the letter of recommendation from the officers at Fort Sill recommending Mr. Evans and Mr. Fisher was received at the Department July 25, 1870; that his subsequent letter bearing date the 18th of August is indorsed as having been received at the Department at Washington on the 23d of September, 1870.

I wish to call the attention of the Senate for a few moments to some of the facts connected with this appointment and these recommendations. Mr. Evans in his application of the 18th of August, 1870, addressed "to the honorable Secretary of War" of the United States, states:

PHILADELPHIA, PENNSYLVANIA, *August* 18, 1870.

SIR: I take the liberty of calling your attention to the accompanying recommendation by the officers of the garrison of Fort Sill, Indian Territory, with the indorsement of the commanding officer, General Grierson, for my appointment as "trader" at said post.

Permit me to state in support of my application that, acting upon the belief that my present appointment was in conformity with the existing laws regulating "traders," and that the same would be of a reasonably permanent character, I have in good faith, with the view of a satisfactory provision for the prosecution of my business and in the interest and convenience of the troops, with care for objects beyond those leading to personal aggrandizement, made extensive improvements in buildings, &c., and have made heavy investments of a mercantile character, amounting in the aggregate to more than $80,000.

I beg also to state that I have formed a copartnership with Mr. E. H. Durfee, now trading at the same place under like authority, and our investments at Fort Sill combined aggregate a sum exceeding $125,000.

In view, then, of the interests that we have at stake and of the vital importance of retaining the protection heretofore enjoyed—because if the same shall be withdrawn, and in the event of our being thrown out of the privileges and protection we now have, our property would become almost valueless—I most respectfully solicit an appointment for Mr. Durfee and myself to continue trading at said military post as a firm, under the style of Evans & Durfee, under such regulations and restrictions as may in future govern traders.

Craving indulgence for thus trespassing on your time and patience, which nothing but threatened injury would have induced.

The application was received at the War Department on the 23d of September, 1870. No appointment was made for that post until the 10th of October thereafter. The officers at Fort Sill joined in the recommendation that Mr. Evans should be appointed to that position. Mr. Marsh in his application, which bears date the 16th of August, says:

No. 51 WEST THIRTY-FIFTH STREET,
Tuesday, 16th *August*, 1870.

Genl. W. W. BELKNAP.

MY DEAR SIR: You will remember my application to you in Washington a few days since for an Indian tradership. Following your suggestion I wrote to a friend in Kansas, and yesterday received a reply. My friend advises me to apply for Fort Sill and Camp Supply. He says also that he is informed that the latter post is to be abandoned, and the supplies concentrated at Fort Sill, but that you will know the facts in regard to this rumor. If true, it will be only worth while to apply for the fort. This post was not mentioned by you as among those already promised, and I venture to hope has not been.

I wrote to you at once, so that in case it is yet free my application may be filed.

I shall send to Ohio immediately for the recommendations of Senator SHERMAN and Representative Stevenson, which I can secure without trouble, and as soon as received will send a formal application.

Please reserve the two posts if possible.

I am, very truly, your obedient servant,

C. P. MARSH.

P. S.—If these posts have been promised I shall be much obliged if you will inform me at your earliest convenience.

And on file we find no recommendation from Senator SHERMAN of Mr. Marsh, but under date of November 2, 1870, is the following from Representative Job E. Stevenson:

Hon. W. W. BELKNAP,
Secretary of War.

DEAR SIR: I have pleasure in recommending Mr. Caleb P. Marsh for appointment as post-trader in the Indian country. He is an old citizen, well qualified, and a sound republican.

Yours truly,

JOB E. STEVENSON.

This bears date the 2d of November, 1870, more than twenty days after the appointment was made. Why was it thought necessary so long a time after this appointment that this recommendation should be procured from Mr. Stevenson? Perhaps it may throw some little light upon the time when the original application was filed. On the 10th of October Mr. Evans was appointed post-trader at Fort Sill. Mr. Evans, after his application was filed in the War Department with the recommendations of the officers of the post, came to Washington for the purpose of securing the appointment. After he arrived here, as we shall show by the witnesses in the case, he called upon the Secretary of War, and the Secretary of War informed him that he could not make the appointment; that he had promised the appointment to Mr. Marsh; and that he must see Mr. Marsh and make the arrangements. Mr. Marsh was telegraphed to; the proof shows, I think, that he was telegraphed to by Mrs. Belknap and informed that Mr. Evans was here, and asking him to come to Washington and see if some arrangement could be made in regard to the post-tradership at Fort Sill. Mr. Evans, in calling upon the Secretary of War, represented to him the sacrifice that it would be if he should be deprived of that post-tradership, the investments that he had made, the amount of capital which he had employed, the buildings and improvements which he had put up, and the importance, therefore, of the appointment to him.

Mr. Marsh comes to Washington. He is a merchant in the city of New York. He had retired from a firm doing an extensive business in the city of Cincinnati when he went to New York. He spends his summers, as it seems, at Long Branch; for during the summer of 1870 Mrs. March is at Long Branch with Mrs. Belknap, and Mrs. Belknap returns with Mrs. Marsh to her house in New York.

Under those circumstances it would seem strange to most of us that this merchant and citizen of New York should solicit the position of post-trader in the Indian Territory, on the extreme frontier, with any intention himself to discharge the duties of that position. But the Secretary is informed that the post-trader at that post has a large capital invested; that it would be an immense sacrifice if he should be deprived of that position. Mr. Marsh knows that it will be ruin to the post-trader if he shall be deprived of it, and these circumstances afford the best possible opportunity for just the arrangement that was subsequently made—for Mr. Marsh to make a contract with Mr. Evans by which Mr. Evans should receive the appointment upon the payment to Marsh of the sum of $12,000 per year.

When they first met in the city of Washington Mr. Evans was stopping at one of our hotels; I do not recollect the name of the hotel. Mr. Marsh first calls upon Mr. Belknap or Mrs. Belknap. He is informed where Mr. Evans is stopping. He goes to the hotel, seeks the interview with Mr. Marsh, and in that interview Mr. Marsh first demands the sum of $20,000 as the only terms upon which he will relinquish the promise which the Secretary of War is said to have given him that he should have that post-tradership. After some further negotiation the sum is reduced to $15,000, and there they meet and a verbal agreement is made that Marsh shall receive $15,000 in quarterly installments; but they go to New York for the purpose of reducing the contract to writing, so that there can be no dispute about it. They are taken to the office of the lawyer of Mr. Marsh, and there the writing is drawn which is finally executed. But on the way to New York Mr. Evans, seeing in the Army and Navy Gazette something that induced him to think that the number of troops at this post might possibly be reduced, insists that the sum of $15,000 is more than he should pay; and, therefore, after further negotiation, the sum is still further reduced down to $12,000, and a condition put in the contract that he should pay for the first year $12,000 in equal quarterly installments, in advance, and thereafter the sum should be reduced in proportion if the number of the troops at that post was reduced.

I think it will be made to appear that after Mr. Marsh had made this arrangement with Mr. Evans at a hotel in this city he called upon Mr. Belknap and informed him that an arrangement had been made. At any rate, after he returned to the city of New York, he wrote to General Belknap requesting that Mr. Evans should be appointed post-trader in his place. That letter we have called upon the accused to produce at this hearing. If not produced, we shall be compelled to introduce secondary evidence as to its contents. It is one of those letters which were placed on file in the office of the Secretary of War, among a file of letters indorsed "semi-official," and, although it related to the appointment to a public position, although it was an appointment made in his official capacity, it was regarded as semi-official; and before the Secretary resigned his office that letter was taken from the files of the Secretary of War, and subsequently other letters were also taken about the time that he resigned, those letters which were denominated "semi-official;" but I hope, Senators, that letter will be produced by the accused.

After this appointment was made under these circumstances, we find that orders were issued from the War Department, all of them directly favoring the object which seemed to be in view in the appointment. The first order which we shall produce is an order addressed—

A. G.—

Adjutant-General, I suppose—

Commanding officer at Fort Sill to be notified to remove all traders from that post excepting Mr. J. S. Evans, who was appointed by the Secretary of War under act July 15, 1870.

I understand that Mr. Walker still remains there with a stock of goods.

W. W. B.

JANUARY 14, 1871.

This is about three months after the appointment was made, and is the first order issued from the Department, that I find, directly to that post. The receipt of this order was acknowledged by the commanding general, Grierson, and subsequently executed. On the 7th of June, 1871, we find this order issued from the War Department:

WAR DEPARTMENT,
Washington City, June 7, 1871.

Let the following be issued as a circular of instructions defining the status of post-traders.

A copy to each commanding officer and trader.

Post-traders appointed under the authority given by the act of July 15, 1870, will be furnished with a letter of appointment from the Secretary of War, indicating the post to which they are appointed.

They are not subject to the rules prescribed in article 25, or paragraphs 196 and 197, Army Regulations, 1863, in regard to sutlers, that office having been abolished by law.

No tax or burden in any shape will be imposed upon them, nor will they be allowed the privilege of the pay table.

They will be permitted to erect buildings for the purpose of carrying on their business, upon such part of the military reservation or post to which they may be assigned as the commanding officer may direct. Such buildings to be within convenient reach of the garrison.

They will be allowed the exclusive privilege of trade upon military reserves to which they are appointed, and no other person will be allowed to trade, peddle, or sell goods, by sample or otherwise, within the limits of the reserve.

They are under military protection and control as camp-followers.

Commanding officers will report to the War Department any breach of military regulation or any misconduct on the part of traders.

All previous instructions in regard to post-traders are hereby revoked.

Under this order the post-traders were no longer subject to control of the board of administration, and the board had no authority whatever to fix the tariff of prices for goods which they might sell to soldiers.

In the fall of 1871 complaints were made that Evans & Co. were selling liquor on the reservation. Suits were commenced in the United States district court. Communication of the fact was made to the Solicitor of the Treasury, and the Secretary of War was notified of these complaints. The Secretary of War, on the 2d of November, 1871, writes to J. S. Evans, post-trader at Fort Sill, the following letter:

SIR: The attention of this Department having been called to the fact that spirituous liquors have been taken into the Indian country without the authority of this Department and against the express prohibition of law by certain parties, I have the honor to request that you will inform me whether your firm has carried liquors into that country to the value of $50,000 or any less sum previous to October 30, 1871; and, if so, by what authority they were introduced there.

Very respectfully, your obedient servant,

WM. W. BELKNAP,
Secretary of War.

On the 8th of November thereafter, the Secretary of War writes the following letter to the Solicitor of the Treasury:

WAR DEPARTMENT, *November 8, 1871.*

SIR: In further response to your letter of the 28th ultimo on the subject of the alleged illegal introduction of liquors, &c., into the Indian country by certain persons, among others Evans & Co., of Fort Sill, I have the honor to inform you that Mr. John S. Evans, post-trader at Fort Sill, through his friends, denies having taken liquor into the Indian country without authority. Mr. Evans was appointed to the post-tradership on October 10, 1870, and holds it in his own name and not in that of Evans & Co., and no complaint has ever been made against him by the military authorities at Fort Sill, he having been regarded a good and law-abiding business man.

I therefore request that no proceedings be commenced against him without a thorough investigation of the charges that he has engaged in such practices shows they were well founded.

Very respectfully, your obedient servant,

W. W. BELKNAP,
Secretary of War.

To the SOLICITOR *of the Treasury.*

From this letter of the Secretary of War to the Solicitor of the Treasury it is very apparent that Mr. Belknap had fresh in his mind that Mr. Evans was appointed post-trader at Fort Sill. He could not mistake as to the appointee. He recites it in this letter. On the 16th of February, 1872, two months and seven days after this letter was written by the Secretary of War to the Solicitor of the Treasury, there appears a communication in the New York Tribune setting forth the extortions which were practiced upon the soldiers at Fort Sill, complaining of the manner in which post-traders were appointed, which article was seen by the Secretary of War. Mr. President, I ask that this article be read by the Secretary of the Senate.

The PRESIDENT *pro tempore.* The Secretary will read the article called for.

The Chief Clerk read as follows from the New York Tribune of February 16, 1872, being a telegram from Washington, dated February 15, 1872.

Passing over the first paragraph, the next one reads:

Army officers stationed at forts in the West complain of the extortions practiced by the post-traders and of the gross abuses practiced under the law which authorizes their appointment. These traders are given the exclusive privilege of selling goods upon the military reservations to the officers, soldiers, Indians, and emigrants. The privilege is so valuable that it is obtained by political or family influence at Washington by men who never go to the posts or engage in the business, but farm out the privilege to actual traders for sums amounting in some cases to $10,000 or $12,000 a year. The traders occupy relations to the Army similar to those the sutlers held during the war, with this exception: that the sutlers were under control of the post commanders, and the soldiers were protected against their rapacity by the power of a council of officers to fix a tariff of prices at which goods

should be sold, whereas the traders are appointed by the Secretary of War, and, having no competition and being under no control, charge any price they please. The sutlers were abolished at the close of the war, and the Commissary Department was required to furnish the necessary articles formerly kept by the sutlers and to sell them to the soldiers at cost price. This law the commissaries found irksome, and they have always managed to evade it. Soon after it went into effect, the Adjutant-General issued an order allowing any one to trade at a military post who should show fitness to the department commander. This was a good arrangement for the troops, for it gave them the advantage of competition; but it did not suit the traders, who have always sought exclusive privileges. It lasted until the summer of 1870, when, on the recommendation of the Secretary of War, a section was put into the Army bill authorizing the Secretary to appoint one or more traders at each military post "for the convenience of emigrants, freighters, and other citizens." The section was plausibly worded and passed without objection. Under it the Secretary appoints but one trader at each post, and refuses to appoint more, so that this single trader, having a monopoly of all the business, plunders the officers and men by charging them outrageous prices. There is no escape from his rapacity, because the officers have no control over him as they had over the sutler. There is good authority for stating that traders' privileges are systematically farmed out by those who obtain them from the War Department. The Secretary is not charged with being cognizant of these practices, and probably has not been informed of them. One of the most outrageous cases of the kind is described in the following letter from an officer stationed at Fort Sill, Indian Territory:

"I have incidentally learned that you have a desire to know whether a bonus is required from the traders here, for the privilege of trading, and have been urged to write you the facts in the case. As there seems to be no secret made of the matter and as, in common with all others here, I feel it to be a great wrong, I think you will readily excuse the presumption which my writing unasked by you might indicate. I have read the contract between J. S. Evans, a Fort Sill trader, and C. P. or C. E. Marsh, of 1867 or 1870, Broadway, New York, office of Herter Brothers, whereby J. S. Evans is required to pay said C. P. or C. E. Marsh the sum of $12,000 per year, quarterly in advance, for the exclusive privilege of trading on this military reservation. I am correctly informed that said sum has been paid since soon after the new law went in force, and is now paid, to include some time in February next. This is not an isolated case. I am informed by officers who were stationed at Camp Supply that Lee & Reynolds paid $10,000 outright for the same exclusive privilege there. Other cases are talked of, but not corroborated to me; sufficient to state, the tax here amounts to near $40 per selling day, which must necessarily be paid almost entirely by the command, and you can readily see that prices of such goods as we are compelled to buy must be grievously augmented thereby. It not being a revenue for the Government and Mr. Marsh being an entire stranger to every one at the post, it is felt by every one informed of the facts to be, as I said before, a very great wrong."

Mr. Manager LYNDE. We shall show that this article in the Tribune was seen by the Secretary of War or that at any rate he conversed with Mr. Marsh and I think with others in regard to this article. It evidently created some alarm in the mind of the Secretary, and on the next day—for that article was in the number of the Tribune of the 16th of February—the Secretary writes the following:

WAR DEPARTMENT,
Washington City, February 17, 1872.

The commanding officer at Fort Sill will report at once, directly to the Adjutant-General of the Army, for the information of the Secretary of War, as to the business character and standing of J. S. Evans, post-trader at that post; whether his prices for goods are exorbitant and unreasonable, or whether his goods are sold at a fair profit; whether the prices charged now and since his appointment to that position by the Secretary of War, under the act of July 15, 1870, are higher than those charged by him prior to that appointment, when he was trader under previous appointment; whether he has taken advantage of the fact that he is sole trader at that post to oppress purchasers by exorbitant prices; whether he charges higher prices to enlisted men than to officers; and whether he has complied with the requirements of the circular of the Adjutant-General's Office issued June 7, 1871.

The commanding officer is expected to make as full and as prompt report as is possible.

W. W. B.

Also similar letter to commanding officer at Camp Supply in regard to the post-trader there, A. E. Reynolds.

The foregoing instructions were communicated to the commanding officers of Fort Sill and Camp Supply, Indian Territory, by the Adjutant-General in letters dated February 19, 1872.

Now I wish to call the attention of the Senate to the reply which was received from General Grierson, the commanding officer at Fort Sill, in response to this inquiry from the Secretary of War.

HEADQUARTERS, FORT SILL, INDIAN TERRITORY,
February 28, 1872.

ADJUTANT-GENERAL, UNITED STATES ARMY,
Washington, D. C.

SIR: I have the honor to acknowledge the receipt of your letter dated February 17, 1872, relative to the post-trader at this post.

I understand J. S. Evans's character as a business man is good, and he has heretofore given general satisfaction; but Mr. Evans is absent, and has been for some months, and has associated with him J. J. Fisher, now also absent, who has had control of the establishment and who claims to have the greater pecuniary interest in the business, (the business being conducted, however, under the name of J. S. Evans.) Repeated complaints have been made to me of the exorbitant prices at which goods were sold by them, and when I have represented the matter to the firm they replied that they were obliged to pay $12,000 yearly (to a Mr. Marsh, of New York City, who they represent was first appointed post-trader by the Secretary of War) for their permit to trade, and necessarily had to charge high prices for their goods on that account. I have repeatedly urged them to represent this matter in writing to me, in order that I might lay the matter before the proper authority to relieve the command of this burden, upon whom it evidently falls; but they declined to do so, stating that they feared their permit to trade would be taken from them.

As the prices could not be regulated by a council of administration, the trader not being a sutler, it has been contemplated by some of the officers of the garrison to represent this matter, without reference to J. S. Evans, through the proper military channels, but as it was claimed that the authority for the tradership emanated from the Secretary of War it was feared that that course might be construed as taking exception to the action of superior authority.

The prices are considerably higher since his appointment by the Secretary of War than previously, and he has undoubtedly taken advantage of his position as sole trader in charging these exorbitant prices, giving the reasons above quoted, stating that he could not, under the circumstances, sell goods at lower prices.

It has also been reported to me that he charges enlisted men greater prices for the same articles than he does officers, and, at all events, it is very evident that the officers and men of this garrison have to pay most of the $12,000 yearly, referred to above, they being the consumers of the largest portion of the stores.

I feel that a great wrong has been done to this command in being obliged to pay this enormous amount of money under *any* circumstances; the largest portion of which, at least, has been taken from the officers and enlisted men of this post, nearly *all* the money of the latter mentioned going to the trader. The responsible party for this great injustice should be *held* responsible and be obliged to refund the money.

If J. S. Evans has *not* paid this exorbitant price for permission to trade, as stated by him, his goods should be seized and sold for the benefit of the post fund.

In order to insure a healthy competition, to reduce the price of goods, and to relieve the officers and soldiers of this garrison from this imposition, I recommend that at least three (3) traders be appointed, and that those appointments be made upon the recommendation of the officers of the post; that each trader be *known* to be interested only in his own house, and that they be obliged to keep such articles as are required for the use of officers and enlisted men of the Army, and to sell them at moderate prices.

The trader complies with circular of A. G. O issued June 7, 1871, as far as I am aware.

The buildings, (store, &c.) however, are not convenient to the present garrison, having been built at the time when the command was in camp.

Very respectfully, your obedient servant,

B. H. GRIERSON,
Colonel Tenth Cavalry, Commanding.

Received in the office of the Adjutant-General March 9, 1872.

[Indorsement.]

WAR DEPARTMENT, A. G. O., *March* 11, 1872.

Respectfully forwarded to the Secretary of War, with application of C. P. Marsh for tradership at Fort Sill.

E. D. TOWNSEND,
Adjutant-General.

Why was the application of C. P. Marsh returned to the Secretary of War with this letter? The application of C. P. Marsh was made at the time Mr. Evans was first appointed, in October, 1870. The letter from General Grierson showing to the Department the abuses existing at that post was received in March, 1872. It seems that at the time the attention of the Secretary of War was called to these abuses the application of C. P. Marsh was again sent up, in order that if there should be a new appointment made at that post it might still be in the control of this same C. P. Marsh, and these extraordinary profits which were realized from that post not lost to the parties in interest.

On the 22d of March, 1872, about a month after this letter was written by the Secretary of War to the commandant at the post, General Hazen was summoned before the Committee on Military Affairs of the House of Representatives and gave his testimony, setting forth and stating the abuses which existed at the post-trading establishment at Fort Sill. In that testimony, however, General Hazen does not seem to be as fully informed as was the correspondent of the Tribune of the 16th of February in regard to who the post-trader really was. General Hazen in his testimony seems to be of the impression, and so states, that Mr. Marsh, of New York, was appointed the post-trader, and that he had farmed out the post to Mr. Evans, who was discharging the duties of post-trader and paying for the benefits to be derived from it to Mr. Marsh directly. This testimony, which was given before the Committee on Military Affairs of the House on the 22d of March, seems to have attracted the attention of the Secretary of War, and on the 25th of March, three days after the testimony was given, we find the following circular issued from the War Department, which would seem to a person who was really cognizant of all the facts to be intended to meet the real difficulties existing at Fort Sill, while it did not meet them at all. This circular is:

[Circular.]

WAR DEPARTMENT,
Washington City, March 25, 1872.

I. The council of administration at a post where there is a post-trader will, from time to time, examine the post-trader's goods and invoices or bills of sale; and will, subject to the approval of the post commander, establish the rates and prices (which should be fair and reasonable) at which the goods shall be sold. A copy of the list thus established will be kept posted in the trader's store. Should the post-trader feel himself aggrieved by the action of the council of administration, he may appeal therefrom, through the post commander, to the War Department.

This is an adoption of the old rule to some extent, and so far so good.

II. In determining the rate of profit to be allowed the council will consider not only the prime cost, freight, and other charges, but also the fact that while the trader pays no tax or contribution of any kind to the post fund for his exclusive privileges he has no lien on the soldiers' pay, and is without the security in this respect once enjoyed by the sutlers of the Army.

"Once enjoyed," but not enjoyed for several years previous to the abolition of that office.

III. Post-traders will actually carry on the business themselves—

Mr. Evans, it appears by the report of General Grierson, was himself absent frequently from the post; but Mr. Evans after all considered himself a resident at the post—

Post-traders will actually carry on the business themselves, and will habitually reside at the station to which they are appointed. They will not farm out, sublet, transfer, sell, or assign the business to others.

Not one word in that order reaches the payment which Evans was making to Marsh. It merely prohibits the post-trader from farming out, subletting, transferring, selling, or assigning the business to others. Evans was the post-trader; he had been appointed by the Secretary of War post-trader; and he was paying by contract to Marsh, the friend of the Secretary, $12,000 a year for the appointment which he held and the privileges he enjoyed.

IV. In case there shall be at this time any post-trader who is a non-resident of the post to which he has been appointed, he will be allowed ninety days from the

receipt hereof at his station to comply with this circular or vacate his appointment.

V. Post-commanders are hereby directed to report to the War Department any failure on the part of traders to fulfill the requirements of this circular.

VI. The provisions of the circular from the Adjutant-General's Office of June 7, 1871, will continue in force except as herein modified.

This order issued by the Secretary of War gave alarm to the post-trader at Fort Sill. He found that the attention of the public was called to the abuses existing there. He immediately commenced a negotiation with Mr. Marsh to reduce the amount which he had been paying, and finally completed an arrangement by which he was to pay thereafter the sum of $6,000 a year instead of $12,000.

I have given a history of this transaction principally from the documents on file in the Office of the Secretary of War. I have shown the history of this appointment, the orders which were issued all favoring, and especially favoring, the post-trader at this position, giving him opportunities and facilities such as no sutler in the Army ever had to extort money and make profits from his trade. I now call the attention of the Senate to the real operating causes, as we believe, for this indulgence and for this abuse.

This appointment having been made on the 10th day of October, 1870, and Evans having promised and entered into a contract that he would pay Mr. Marsh $12,000 a year, quarterly in advance, with a stipulation consenting that the first payment should be delayed for a time, we find on the 1st day of November thereafter, a little more than twenty days from the time the appointment is made, an express package sent by Mr. Marsh to W. W. Belknap, in the city of Washington, containing $1,500, delivered to Mr. Belknap by the express company in this city, receipted for by Mr. Belknap in his own handwriting. We find on the 17th day of January thereafter another package of $1,500, just one-half of the quarterly payment, sent by express from New York City by Mr. Marsh to W. W. Belknap, received by Mr. Belknap here; and, if my recollection serves me right, it was also receipted by him personally. On the 18th day of April, 1871, another package of $1,500 was sent by express by Mr. Marsh to Mr. Belknap, and delivered to him in this city. Whether that was delivered to him personally I cannot now state, or whether it was received by his clerk. On the 11th of November, 1873, another package was sent by express of the same sum by Mr. Marsh to Mr. Belknap. On the 10th of April, 1874, another package of the same amount was sent by express to Mr. Belknap by Mr. Marsh. On the 25th of May, 1875, there was one package sent of $1,500, though indorsed $1,000; and on the 5th of November next thereafter a package of $750.

When these express packages were sent to Mr. Belknap, Mr. Marsh will testify that he was accustomed to notify Mr. Belknap. He usually received his instructions as to how they should be sent, and whenever he sent them he notified Mr. Belknap that the packages were forwarded to him, usually sending him the receipt of the express company showing that the package had been received by the express company to be delivered to him, which receipt was returned back by Mr. Belknap to Mr. Marsh, written upon "O K," all correct, or something of that kind; but all these receipts, all communications of any kind, every writing that showed that any money had ever been paid by Mr. Marsh to Mr. Belknap were destroyed. No one of them can be found. Mr. Marsh will testify that these writings were destroyed immediately after the transaction, and in order that no written evidence should be preserved of the facts.

We shall show also that three payments were made to Mr. Belknap in certificates of deposit, one under date of February 10, 1871, for $1,500; one under date of January 15, 1872; and one under date of November 9, 1874. As to these certificates of deposit, an effort was made to conceal and to prevent any trace of them from Mr. Marsh to Mr. Belknap, for they were always given and made payable to Mr. Marsh himself, never to Mr. Belknap. It is true that Mr. Marsh subsequently indorsed these certificates of deposit to Mr. Belknap, and thereby we are enabled to trace them through his hand.

The other payments mentioned in the specifications were made to Mr. Belknap in person. The payment of July 25, 1871, was received by Mr. Belknap in New York City; the payment of June 13, 1872, was the same; the payment of November 22, 1872, the same. At the payment of April 28, 1873, Mr. Belknap was in Texas, and we shall not attempt to sustain that specification by evidence. That is the ninth specification of the fourth article. The payment of June 16, 1873, was made to Mr. Belknap in New York. As to the payment of the 22d of January, 1874, we shall not attempt to sustain that charge, which is the twelfth specification of the fourth article. As at present advised in regard to the evidence which we have, I make this statement; but if in the course of the trial it should appear that we can prove these specifications we shall ask leave to do so, although at present we think we shall have no occasion.

Now, Mr. President and Senators, if we succeed in proving these payments, as I have charged, it seems to me there is nothing necessary to be done, and the judgment of this court must convict the accused. The receipt of these large sums of money from Mr. Marsh at the times, periodically, according to the original contract made between Marsh and Evans, the amounts corresponding with the amounts of payments made by Evans to Marsh, handing over one-half of those payments to the Secretary of War, the circumstances under which the appointment was made, disregarding the recommendation of all the officers of the post with a knowledge that to take Mr. Evans from that post would ruin him in fortune and destroy his business, that it was given to a man who had no intention and no purpose of going from New York City to an Indian trading post or a post in an Indian territory for the purpose of supervising or transacting the business; all of these facts, known to the Secretary of War and his particular friend C. P. Marsh and used by him to extort from the post-trader who received the appointment this enormous sum, must convince every reasonable man that the Secretary of War was a *particeps criminis* in the whole transaction.

Senators, I have occupied now more time than I intended when I first arose. I have felt at liberty to read to you the orders that were issued by the War Department, in order that you might be familiar with the condition of affairs at the time Mr. Belknap took charge of that Department, that you might be acquainted with the orders and the regulations existing at the time that this post-trader was appointed; that you might know that the whole matter rested with the Secretary of War; that he at any time could have adopted rules and regulations to protect the soldiers at that post, to prevent extortion, rules which as a mockery he did adopt on the 25th of March, 1873, after the public attention had been called to these abuses. After all, I say as a mockery, because it did not reach the real evil; because this post-trader was not farming out his office, but was paying an outsider for his influence with the Secretary of War.

Senators, I have presented to you a statement of the proofs which we shall introduce to sustain this impeachment. There will be some facts brought out in the course of the trial which I have failed to mention; but I have endeavored to present the principal ones. I do not feel that it is necessary to say anything upon the law if these facts shall be proven. You all know the magnitude of the crime; you all know the shock which its exposure has given to the American people; you know the disgrace which it has brought upon our Government, and it remains with you to vindicate the national character and show to the world that our Republic requires official integrity in high official position.

Mr. CARPENTER. Mr. President, before the manager takes his seat I should like to inquire of him, if he will inform us, whether the managers claim that the facts charged in the articles of impeachment violate any and what statute of the United States. In other words, will they inform us what particular "high crime" this is?

Mr. Manager LYNDE. I will answer the gentleman that while we do not deem it important or necessary, in order to sustain the impeachment, that it should be based upon any statute or act of Congress, we do rely and refer to section 1781 of the Revised Statutes, and also to section 5501.

Mr. CARPENTER. Will you please to read those sections, or have them read, so that we can see what they are?

The PRESIDENT *pro tempore*. The Secretary will read the sections called for.

The Chief Clerk read as follows:

SEC. 1781. Every member of Congress or any officer or agent of the Government who, directly or indirectly, takes, receives, or agrees to receive, any money, property, or other valuable consideration whatever, from any person for procuring or aiding to procure, any contract, office, or place, from the Government or any Department thereof, or from any officer of the United States, for any person whatever, or for giving any such contract, office, or place to any person whomsoever, and every person who, directly or indirectly, offers or agrees to give, or gives, or bestows any money, property, or other valuable consideration whatever, for the procuring or aiding to procure any such contract, office, or place, and every member of Congress who, directly or indirectly, takes, receives, or agrees to receive any money, property, or other valuable consideration whatever after his election as such member, for his attention to, services, action, vote, or decision on any question, matter, cause, or proceeding which may then be pending, or may by law or under the Constitution be brought before him in his official capacity, or in his place as such member of Congress, shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than two years and fined not more than $10,000. And any such contract or agreement may, at the option of the President, be declared absolutely null and void; and any member of Congress or officer convicted of a violation of this section shall, moreover, be disqualified from holding any office of honor, profit, or trust under the Government of the United States.

SEC. 5501. Every officer of the United States, and every person acting for or on behalf of the United States, in any official capacity under or by virtue of the authority of any department or office of the Government thereof; and every officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, who asks, accepts, or receives any money, or any contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may be by law brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be punished as prescribed in the preceding section. (See § 5451.)

Mr. Manager McMAHON. The managers are ready to submit the testimony now, and to have such witnesses sworn as are here present.

The PRESIDENT *pro tempore*. The Secretary will call the names of the witnesses who are present.

The names of the following witnesses were called, and they advanced to the desk, and the Chief Clerk administered the oath prescribed to them, respectively: Caleb P. Marsh, E. T. Bartlett, George W. Moss, J. S. Dodge, Robert C. Seip, Irwin McDowell, George M. Adams, E. W. Rice.

Mr. McMAHON. We propose to examine Mr. Adams first.

The PRESIDENT *pro tempore* suggested that witnesses take a place at the right of the Chair, on a level with the Secretary's desk; but at the suggestion of the managers and several Senators, a place on the floor in front of the Secretary's desk was assigned to the witnesses.

Mr. Manager McMAHON. I wish to ask Mr. Adams if he is the Clerk of the House of Representatives.

Mr. CARPENTER. One moment.

Mr. BLACK. I will ask the gentlemen if they have any objection to state to us what they propose to prove by this witness?

Mr. Manager McMAHON. Nothing, except to produce a document which we expect to prove by another witness.

Mr. BLACK. Mr. President, I presume that the managers intend now to call the witnesses and produce the evidence which they have mentioned in their opening.

Mr. Manager McMAHON. The gentleman is correct.

Mr. BLACK. We object to any evidence being given in consequence of the condition in which this case now stands; that is, we stand upon a right which, if it be recognized by the Senate, enables us to exclude all evidence such as that which they have declared their intention of giving.

By the Constitution two-thirds of the Senate are required to convict the defendant. One-third voting in his favor express the sense of the Senate; that is, more than one-third voting in his favor are entitled to have their judgment recorded as the judgment of the Senate upon any fact or any rule of law which is an essential element in any legal conviction which the Senate can pronounce. We make this objection now not with any intent or desire to indulge in argument, and still less with any wish to provoke an argument upon the other side. We can hardly expect that a majority of the Senate will take our view of the question now, inasmuch as it appears heretofore to have been rejected by the majority. The majority have this body in their hands. They can order any judgment to be entered upon the record which they see proper, and for aught I can see they can execute it. Although a bare majority has not the constitutional authority to do a thing, yet I do not know how to stop them if they think they have. Although a third of the Senate be constitutionally the organ of the whole Senate and has a right to express its judgment, yet if the majority will not let them do it I do not know what is to be done. We take it for granted that what the majority has once said it will say again; but yet it is necessary and proper that at this stage of the proceeding and at every stage we should so assert our right as that nothing can be quoted against us hereafter as a concession to the other side. We not only insist upon it that this court has no jurisdiction; that is, that one of the principal facts which it is necessary should be found in order to enable you legally to convict the accused does not exist, but that the fact and the law have been actually found in our favor, so that it is now declared already and placed upon record by the votes of more than one-third of the Senate that he is not, that he was not at the time when this impeachment was instituted against him, an officer of the Government; that the great question arose then and was debated before this body which Governor Johnston put so pertinently to the North Carolina convention at the time of the adoption of the Constitution by that State, "How can a person be removed from an office which he does not hold?"

A majority of this body have concluded that he could be removed from an office which he did not hold. That has never got through our minds; we cannot understand it. We do not appreciate the logic by which such a conclusion can possibly be reached. Of course I cannot say that it is absurd when I recollect who it is that thinks it is perfectly sensible and proper. Therefore there must be some reasoning about it that we have not been able to comprehend; but whether there is or is not, it has become a fixed constitutional fact established by the judgment of one-third of the Senate, and upward of one-third, and by the non-concurrence of two-thirds of the Senate, that he is not, and was not at the time of the commencement of these proceedings against him, an officer of the Government within the meaning of the Constitution. That we take it ought to end the question unless the gentlemen can show, or unless it shall be the opinion of the Senate, that it makes no difference, that it is not an essential element in the judgment which you are about to pronounce. But we think it is, and to us, to me at all events, the point is so near being perfectly self-evident that I do not know how to make an argument upon the one side any more than upon the other side. You all know the difficulty of proving that the light shines down through the spaces in yonder ceiling that are made for that purpose. The most difficult thing perhaps to prove is that which everybody knows to be true and which requires simply to be stated in order to establish it. That is my fix here. Perhaps I may be mistaken about it; I suppose I must be. I would say certainly and clearly that I am mistaken about it if the Senate had not concurred in the same view. I now say that the sense of this body has been spoken by those who have a right to speak it to the number of more than one-third of its members, and that that is as conclusive of the case as if every individual member had given the same vote.

Mr. Manager HOAR. Mr. President, we are here to execute this order of the Senate that—

> The trial shall proceed on the 6th of July next as upon a plea of not guilty.

We do not propose to discuss the question now whether that order was properly adopted, nor do we propose to discuss the question now what will be the legal and constitutional result in the termination of this trial of the opinions which any individual members of this court may entertain or have heretofore expressed.

Mr. CARPENTER. Mr. President, the order to which the honorable manager refers was based upon the order which was made declaring that the plea in abatement was bad, that the demurrer to the replication was bad, the replication good, the plea bad, and the articles good. We have filed in due course of practice a motion to vacate that order, and that is the foundation of all subsequent proceedings in this cause. It seems to me that that motion should be first disposed of before we come into this trial. It would be a very awkward proceeding if we should spend three or four weeks here, with the sun riding with the Sirian star, in taking testimony, and the Senate should then finally be convinced that the order which had been made, and which is the foundation of this proceeding, was erroneous and must be reversed.

I want in this connection to say a few words in the nature of a personal explanation. When I appeared here after that order was pronounced in the court, I suggested to the court certain questions which in my opinion arose upon the order which required consultation between the counsel for the defendant before we could determine what steps we would take as his counsel. Among other things, I stated my impression to be that in the case of a plea in abatement being demurred to, or after replication demurrer being filed to that, the rule that the court could go back through the record was confined to the particular branch of pleadings out of which the demurrer arose; and that the Senate having decided that our demurrer to the replication of the House was bad, the court were estopped from going back to other parts of the record. A newspaper says—I did not quite understand it at the time—that the Senator from Ohio [Mr. THURMAN] administered to me a glowing and proper rebuke for my impertinence and easy impudence in suggesting that an order made by the court could be erroneous. I want to purge myself of contempt, (not of the Senate, for I do not think the Senate regarded it as an impropriety on my part, but of contempt of the press that evidently did regard it as an improper suggestion,) by saying that there is no court in England or America exercising original jurisdiction which does not concede as one of the regular steps of practice, motions to reconsider, and in chancery motions for rehearing and bills of review upon errors of law apparent upon the record. Half the criminal cases that are tried in England and America are finally disposed of on motions for a new trial based upon the suggestion that the court below has erred in admitting or rejecting testimony or in its instructions to the jury, and no man on the bench or at the bar ever supposed that such a motion was disrespectful to the court. The courts of chancery in England which administer original jurisdiction, our courts in this country, our circuit courts, the Supreme Court of the United States, all have rules regulating motions for rehearing; and the Supreme Court of the United States itself, sitting with advantages possessed by no other tribunal in the land to be correct in its judgment, has over and over again reversed its decisions. One of the first which was reversed was by Chief Justice Marshall reversing an opinion he had delivered himself, upon the ground that counsel had not argued the former case; that is to say, he apologized for the error in the former case upon the ground that counsel had not argued that case at the bar.

In making the suggestion I did I beg to assert that I not only professed but that I entertained then and now the most perfect respect for this court. The Supreme Court of the United States would entertain a bill of review in any case where they had exercised the original jurisdiction conferred upon them by the Constitution. A State, for instance, is sued by a bill in chancery in that court. Every proceeding in that suit is regulated by orders of the court, from time to time, if necessary; and every incident of a chancery case in England pertains to that trial in that court, and you may make a motion for a rehearing upon any order or decree made by the court; you may within a year file a bill of review for errors of law apparent upon the record of that court. I presume no man will doubt that.

Again, let me say that in a case which I shall refer to in subsequent arguments before this tribunal, two years after conviction on an impeachment in the British Parliament a bill pointing out errors of law was filed for the purpose of reversing that decree; and by some process, not very plain from the histories which I have examined, the party convicted was relieved from the effect of the decree. So much for the explanation.

Now I come back to this point: I say there was nothing disrespectful to this court or any member of it in suggesting that that order was erroneous. At that time I was exceedingly modest about the statement. It was my impression very decidedly, and I stated it so; but I have devoted a week to the examination of it, and I am now prepared to prove it so to the satisfaction of every lawyer who holds a seat in the Senate. That order is the foundation of the proceedings that are now to go on, and it seems to me that the regular and proper course would be to have that motion for rehearing argued and disposed of by this court. I feel satisfied that the positions which I assumed in the suggestions I made are sound; that that order is erroneous, especially in holding that the articles of impeachment were sufficient in law; a question not before the court at all, as I will satisfy every member of the Senate when I get at it. If authorities can settle anything, then I say that we ought to be heard upon the reversal of that order before we go any further in the case.

The authorities are plain, too plain to be doubted, and not a single conflicting case, to my knowledge, can be found. In two of the cases the judges say that they have searched in vain for conflicting au-

thority, to wit, that on a plea in abatement where the demurrer is overruled, or where it is followed by a replication to which a demurrer is filed, and that demurrer is overruled, the court cannot go back through the record; no other parts of the record are before the court. That is the well-settled rule both in this country and in England, as I can show by the authorities when we come to it. Then the order which was made was made erroneously; I may use the honest language of the law. "Erroneously" is the honest, frank work. It implies no disrespect to the intellect of any Senator or the aggregated wisdom of the Senate, for God never made a court which could not err. We are ready to prove—not merely to assert, but to prove—by the authorities that that order is erroneous, and ought to be reversed.

The PRESIDENT *pro tempore*. Do the managers desire to be heard?

Mr. Manager McMAHON. No, sir.

The PRESIDENT *pro tempore*. The question raised by the counsel will be reduced to writing, and the Chair will submit it to the Senate.

Mr. Manager JENKS. I submit that they ask for no special order. I do not know that they ask for any ruling, and we therefore propose to proceed with the trial.

The PRESIDENT *pro tempore*. The counsel objected to the examination of the witness.

Mr. SHERMAN. I suppose the question is, Shall the interrogatory be put to the witness?

The PRESIDENT *pro tempore*. So the Chair understood, and he has asked that the proposition be reduced to writing. [A pause.]

Mr. CARPENTER. We ask the Clerk to read the order which we ask.

The PRESIDENT *pro tempore*. The order will be read.

The Chief Clerk read as follows:

The counsel for the accused object to the evidence now offered and to all evidence to support the opening of the managers, on the ground that there can be no legal conviction, the Senate having already determined the material and necessary fact that the defendant is not, and was not when impeached, a civil officer of the United States.

The PRESIDENT *pro tempore*. The Chair will submit the question of objection to the Senate. [Putting the question.] Senators concurring in the objection will say "ay;" those non-concurring "no."

The "noes" prevailed.

The PRESIDENT *pro tempore*. The Senate overrules the objection. Proceed with the witness.

GEORGE M. ADAMS examined.

By Mr. Manager McMAHON:

Question. Mr. Adams, are you the Clerk of the House of Representatives?

Answer. I am.

Q. [Handing a paper.] Take that paper and state where you received it and what it is.

A. [Having examined the paper.] The paper which I hold in my hand purports to be "articles of agreement between J. S. Evans and C. P. Marsh." It was received by me from the Public Printer as a part of the original papers that were before the Committee on War Expenditures, I believe. It was forwarded to me from the Government Printing Office in connection with those papers.

Q. Has it been in your possession ever since?

A. It has been in my possession ever since it was returned to me from the Public Printer.

Q. (By Mr. Manager JENKS:) What public printer?

A. A. M. Clapp, I believe, is the name.

Mr. McMAHON. We have no further questions.

The PRESIDENT *pro tempore*. Do the counsel for the respondent desire to propound any questions?

Mr. CARPENTER. No, sir.

EDWARD T. BARTLETT called and examined.

By Mr. Manager McMAHON:

Question. Where do you reside?

Answer. In the city of New York.

Q. What is your occupation?

A. Attorney and counselor at law.

Q. A member of what firm?

A. Bell, Bartlett & Wilson.

Q. Are you acquainted with Caleb P. Marsh?

A. I am.

Q. How long have you known him?

A. I think I have known him since the year 1868 or 1869.

Q. Have you been his legal adviser in that time?

A. I have been.

Q. State whether upon any occasion he came to you with a person whom he represented to be a Mr. Evans, for the purpose of having a contract drawn up?

Mr. CARPENTER. Do the managers claim that they can introduce evidence of an interview between third persons at which we were not present?

Mr. Manager McMAHON. Yes, sir; we propose to connect the accused with it in the course of the trial. This is the mere formal part of the proof.

Mr. CARPENTER. We do not know any rule which allows them to prove an interview between this man and two or three other men at which Mr. Belknap was not present.

Mr. Manager McMAHON. I simply inquire for the fact, whether he came to draw the agreement.

Mr. CARPENTER. That is no fact here, unless Mr. Belknap was present.

Mr. Manager McMAHON. We cannot get in all our facts at once; we must get them in one at a time.

The PRESIDENT *pro tempore*. Do counsel object?

Mr. CARPENTER. No; go on.

Mr. Manager McMAHON, (to the witness.) Can you answer the question?

The WITNESS. Let the stenographer read the question.

The question was read, as follows:

Q. State whether upon any occasion he [Marsh] came to you with a person whom he represented to be a Mr. Evans for the purpose of having a contract drawn up?

A. When I was employed to draw this contract Mr. Marsh came alone to my office. I did not see Mr. Evans until the contract was executed. Mr. Marsh came to my office, as I now remember, about the date of that contract, and handed me a written memorandum of his own containing in substance the subject-matter of this contract and requested me to reduce it to legal shape.

Q. [Handing to the witness the paper identified by Mr. Adams.] Look at that paper, and see if that is the agreement which you drew up and which was signed by the parties?

A. [Having examined the paper.] That is all in my handwriting.

Q. The agreement is in your handwriting?

A. Yes, sir.

Q. Who is the subscribing witness to it?

A. I am.

Q. That is your signature?

A. Yes, sir.

Q. Did the parties sign it in your presence?

A. After the contract was drawn I was requested to call on him up town in the evening, at the store of Herter Brothers, No. 867 Broadway, as I now remember. Mr. Marsh was a partner in that firm; and I was there introduced by Mr. Marsh to a gentleman called John S. Evans, whom I had never seen before and have never seen since. This gentleman and Mr. Marsh executed the contract in my presence.

Mr. Manager McMAHON. We offer the agreement in evidence, and desire that the Secretary may read it.

The PRESIDENT *pro tempore*. The paper will be read by the Secretary, if there be no objection.

The Chief Clerk read as follows:

Articles of agreement made and entered into this 8th day of October, A. D. 1870, by and between John S. Evans, of Fort Sill, Indian Territory, United States of America, of the first part, and Caleb P. Marsh, of No. 51 West Thirty-fifth street, of the city, county, and State of New York, of the second part, witnesseth, namely:

Whereas the said Caleb P. Marsh has received from General William W. Belknap, Secretary of War of the United States, the appointment of post-trader at Fort Sill aforesaid; and whereas the name of said John S. Evans is to be filled into the commission of appointment of said post-trader at Fort Sill aforesaid, by permission and at the instance and request of said Caleb P. Marsh, and for the purpose of carrying out the terms of this agreement; and whereas said John S. Evans is to hold said position of post-trader as aforesaid solely as the appointee of said Caleb P. Marsh, and for the purposes hereinafter stated:

Now, therefore, said John S. Evans, in consideration of said appointment and the sum of $1 to him in hand paid by said Caleb P. Marsh, the receipt of which is hereby acknowledged, hereby covenants and agrees to pay to said Caleb P. Marsh the sum of $12,000 annually, payable quarterly in advance, in the city of New York aforesaid; said sum to be so payable during the first year of this agreement absolutely and under all circumstances, anything hereinafter contained to the contrary notwithstanding; and thereafter said sum shall be so payable, unless increased or reduced in amount in accordance with the subsequent provisions of this agreement.

In consideration of the premises, it is mutually agreed between the parties aforesaid as follows, namely:

First. This agreement is made on the basis of seven cavalry companies of the United States Army, which are now stationed at Fort Sill aforesaid.

Second. If at the end of the first year of this agreement the forces of the United States Army stationed at Fort Sill aforesaid shall be increased or diminished not to exceed one hundred men, then this agreement shall remain in full force and unchanged for the next year. If, however, the said forces shall be increased or diminished beyond the number of one hundred men, then the amount to be paid under this agreement by said John S. Evans to said Caleb P. Marsh shall be increased or reduced in accordance therewith and in proper proportion thereto. The above rule laid down for the continuation of this agreement at the close of the first year thereof shall be applied at the close of each succeeding year so long as this agreement shall remain in force and effect.

Third. This agreement shall remain in force and effect so long as said Caleb P. Marsh shall hold or control, directly or indirectly, the appointment and position of post-trader at Fort Sill aforesaid.

Fourth. This agreement shall take effect from the date and day the Secretary of War aforesaid shall sign the commission of post-trader at Fort Sill aforesaid, said commission to be issued to said John S. Evans at the instance and request of said Caleb P. Marsh, and solely for the purpose of carrying out the provisions of this agreement.

Fifth. Exception is hereby made in regard to the first quarterly payment under this agreement, it being agreed and understood that the same may be paid at any time within the next thirty days after the said Secretary of War shall sign the aforesaid commission of post-trader at Fort Sill.

Sixth. Said Caleb P. Marsh is at all times, at the request of said John S. Evans, to use any proper influence he may have with said Secretary of War for the protection of said John S. Evans while in the discharge of his legitimate duties in the conduct of the business as post-trader at Fort Sill aforesaid.

Seventh. Said John S. Evans is to conduct the said business of post-trader at Fort Sill aforesaid solely on his own responsibility and in his own name, it being expressly agreed and understood that said Caleb P. Marsh shall assume no liability in the premises whatever.

Eighth. And it is expressly understood and agreed that the stipulations and covenants aforesaid are to apply to and bind the heirs, executors, and administrators of the respective parties.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

JOHN S. EVANS. [SEAL.]
C. P. MARSH. [SEAL.]

Signed, sealed, and delivered in presence of—
E. T. BARTLETT.

Mr. Manager McMAHON. We are through with the witness for the present.

The PRESIDENT *pro tempore*. Have the counsel any questions to ask?

Mr. CARPENTER. No, sir.

Mr. Manager McMAHON. I desire to ask counsel on the other side if they have any objection to permitting Mr. Bartlett to return home, liable to be recalled by telegraph?

Mr. BLACK. We have no objection.

Mr. Manager McMAHON. We shall need him again. He is not discharged, but we will take the responsibility of letting him go, we telegraphing him when we desire him to be here.

The PRESIDENT *pro tempore*. The next witness will be called.

Mr. Manager McMAHON. I should like to know if John S. Evans has arrived yet?

The PRESIDENT *pro tempore*. The Secretary will call the name.

The Chief Clerk called the name of John S. Evans, but no response was heard.

John I. Fisher's name was called and no response made.

GEORGE W. MOSS called and examined.

By Mr. Manager McMAHON:

Question. What is your occupation at present?

Answer. I am the agent of Adams Express Company in Washington.

Q. How long have you been in their employ?

A. Eleven years.

Q. Continuously?

A. Yes, sir.

Q. What position have you held for the last six years?

A. Within that time I have held two or three different positions in the office.

Q. State them.

A. Six years ago I was in charge of the money department, and four years ago I was appointed acting agent; two years ago, agent.

Q. Who succeeded you in the money department?

A. Mr. Giddings.

Q. Who is your money-delivery clerk?

A. Mr. Dodge.

Q. How long has he been so?

A. I think he has been there for fifteen or sixteen years.

Q. Have you brought with you the books that you were subpœnaed to bring?

A. Yes, sir.

Q. Please produce them; we wish to look at them.

[The witness produced the books.]

Mr. RANDOLPH. Mr. President, is there any objection on the part of the Senate and counsel to have the witness stand at your right or left? So far as I am concerned, it is utterly impossible for me to hear one word out of three that is spoken. It has been so during the whole time. If I take the seat of another Senator it is at his inconvenience. This is my seat. I have no right to another, but I have a right to hear what is said.

[The honorable Senator occupies the extreme northwestern seat in the Chamber.]

The PRESIDENT *pro tempore*. The Chair will state to the Senator that he designated a little higher place for the witnesses, but the managers and counsel thought it would be preferable to have the witness in front of the desk, and the Chair submitted that to the Senate, and, as there was no objection, the witnesses were placed there.

Mr. BLAIR. We do not object to the change proposed.

The PRESIDENT *pro tempore*. Is there objection to the witnesses standing near the Chair on a higher place?

Mr. Manager McMAHON. There will have to be some arrangement for the handing of these books there.

The PRESIDENT *pro tempore*. The witness will stand on the right of the Chair on a level with the Secretary's desk and try to make himself heard.

[The witness was placed in the position stated, as were the subsequent witnesses.]

Q. (By Mr. Manager McMAHON:) Mr. Moss, have you your books arranged in order by years?

A. Yes, sir.

Q. Turn to the book that contains your bound way-bills for November, 1870.

A. Yes, sir; here it is.

Q. Turn to the original way-bill of November 1, 1870, shipment from New York.

A. [Examining book.] I have it here.

Q. Before we ask you its contents, state if that is the original paper that accompanies shipments of money from New York to Washington City.

A. It is.

Q. In whose handwriting is that bill?

A. Mr. Moody's.

Q. Where does he reside?

A. In New York.

Q. State the custom in your office in regard to verifying the packages that are put into the safe with the way-bill that accompanies them.

A. They are verified by the check of the clerk who places them in the safe and his signature at the bottom of the manifest.

Q. Tell us if there appears to have been a package sent from New York, and, if so, from whom, to General Belknap of that date?

A. Yes, sir; a package of $1,500 for General Belknap on that date.

Q. Sent by whom?

A. C. P. Marsh.

Q. From what point?

A. From New York to Washington.

Q. Now turn to the book under date of January 17, 1871; have you the original way-bill of that date?

A. Yes, sir.

Q. Do you find a shipment there to General Belknap?

A. Yes, sir; one package, $1,500, from C. P. Marsh to Hon. W. W. Belknap.

Q. From what point was it shipped?

A. From New York.

Q. In whose handwriting is that way-bill?

A. In the same, Mr. Moody's.

Q. Mr. Moody's or Mr. Young's?

A. Mr. Moody's. Mr. Young verifies the manifest.

Q. Turn to the book for April 18, 1871; do you find a shipment there to General Belknap?

A. I do.

Q. Give the particulars of it.

A. One package, $1,500, from C. P. Marsh to Hon. W. W. Belknap, from New York.

Q. Whose handwriting is that in?

A. The same; Mr. Moody's.

Q. By whom checked?

A. Mr. Young.

Q. Now turn to November 4, 1873.

A. I have it.

Q. State the contents of that way-bill.

A. One package, $1,500, from C. P. Marsh to General W. W. Belknap, from New York.

Q. In whose handwriting is that made out?

A. The same; Moody's.

Q. And checked by Young?

A. Checked by Mr. Young.

Q. Now turn to the 10th of April, 1874.

A. April 10, 1874, from New York, one package, $1,500, from R. G. Carey & Co. to Hon. W. W. Belknap

Q. In whose handwriting and by whom checked?

A. It is in the handwriting of Mr. Moody. There is no check on this bill. Mr. Young was absent then.

Q. Turn to the 24th of May, 1875.

A. May 24, 1875, from New York, one package, $1,000, from R. G. Carey & Co. to W. W. Belknap.

Q. In whose handwriting is that way-bill and by whom checked?

A. It is in Mr. Moody's writing. There is no check at the bottom.

Q. Now turn to November 8, 1875.

A. November 8, 1875, from New York, one package, $500, from R. G. Carey & Co. to Hon. W. W. Belknap.

Q. In whose handwriting is that way-bill or manifest?

A. Mr. Moody's.

Q. And checked by Mr. Young?

A. Mr. Young's check is not on it.

Q. Take January 18, 1876.

A. That I have not here with me. That book is in the binder's hands.

Q. We may probably take a statement of that at some future time. Have you any book from which you can make a statement of it?

A. Yes, sir.

Q. What book is it?

A. The delivery-book.

Q. State what that is, the date, and all about it.

A. The package on the manifest of January 18, 1876, was received here on the morning of the 19th; it was for a parcel valued at $2,000, with no name of the consignor given, for Mrs. W. W. Belknap.

Q. Was it money or a parcel?

A. I cannot say.

Q. Now, in regard to all these way-bills or manifests, I desire to ask you a few general questions. Are these the money shipments from New York to this city?

A. Yes, sir; this book contains the money as well as the freight way-bills.

Q. But these you have been reading from are the money way-bills?

A. Yes, sir; the money way-bills.

Q. In what way does that money come forward from New York?

A. It comes to us in a safe.

Q. After the safe is opened, state whether the marks on the contents of the packages are compared with the way-bill.

A. Yes, sir; they are.

Q. And if found not to correspond in the least particular, what takes place?

A. Upon the receipt of a safe containing money packages it is the duty of the clerk to check each package from off the manifest and attest it by his particular check. If it should turn out that a package was short, we should have to telegraph about it.

Q. That is marked "short?"

A. The package is marked "short," and we telegraph at once.

Q. You know nothing, of course, about the contents except from the marks on the outside?

A. That is the only way.

Q. Now state from these way-bills what were the marks on the outside of each one of these packages delivered to General Belknap, and particularly whether the money mark would be on the outside of each one and the amount of money.

A. Each package would be marked with the amount of money said to be contained in the package. The envelopes that are in common use by express companies have the name of the shipper as well as the consignee.

Q. So wherever the way-bill shows that a package marked "$1,500" came forward, that package must have had "$1,500" in figures marked on the outside?

A. Exactly.

Q. Is not the only place from which you could get the information to make up the way-bills the outside marks?

A. Yes, sir. The money way-bill is a perfect transcript of the face of the money envelope except the local address in the city.

Q. You have besides these way-bills the receipt-books. Explain now to the court how those receipt-books are made up first and by whom before they are sent out with the delivery clerk to deliver the money.

A. After a money manifest is checked, it is the duty of a clerk who is delegated for that purpose to transcribe the entries from the manifest to the delivery book, and this delivery clerk then takes his book and checks the packages to see that they are all there before he leaves the office; so that the delivery book is a transcript of the manifests.

Q. And he sees also that the book corresponds with the marks on the packages?

A. He must see.

Mr. Manager McMAHON. I believe that is all, Mr. Moss, at present. Gentlemen on the other side can examine.

Mr. BLAIR. We do not intend to cross-examine him.

JONAS S. DODGE called and examined.

By Mr. Manager McMAHON:

Question. How long have you been in the employ of Adams Express Company?

Answer. Since 1856.

Q. In what capacity?

A. In various capacities.

Q. How long have you been the money-delivery clerk?

A. For thirteen years.

Q. These last thirteen years?

A. The last thirteen years.

Q. Take the delivery books—you have them in order—take first November 1, 1870.

A. I have the delivery-books, [producing books.]

Q. See whether, on the 2d of November, 1870, you had a package for General Belknap; and, if so, from where, what it was, and to whom you delivered it, and who receipted for it.

A. I find an entry of November 2, 1870, "One package, value $1,500, from New York," to Hon. W. W. Belknap.

Q. Does the shipper's name appear?

A. The shipper's name appears in pencil.

Q. Who was the shipper?

A. C. P. Marsh.

Q. Did you deliver that in person; and, if so, by whom was the receipt given to you?

A. I hold the receipt of W. W. Belknap.

Q. Is that his handwriting?

A. Yes, sir.

Q. Does your receipt book show the individual person to whom you delivered the package?

A. Yes, sir.

Q. Now turn to the 17th of January, 1871.

A. I have the book for January 17, 1871.

Q. Now state what appears there that has reference to this case—the delivery of money to Mr. Belknap.

A. There appears one package from New York, value $1,500, from C. P. Marsh to Hon. W. W. Belknap.

Q. By whom receipted?

A. The receipt is signed "W. W. Belknap."

Q. Whose handwriting is that receipt in?

A. It seems the same as before, "W. W. Belknap."

Q. Turn now to April 18, 1871.

A. On April 18, 1871, I find one package from New York from C. P. Marsh, $1,500, to Hon. W. W. Belknap, and the receipt is signed by "John Potts, for W. W. B."

Q. Who was John Potts?

A. John Potts was chief clerk of the War Department.

Q. He is now dead, is he not?

A. He is dead.

Q. You delivered that package to Mr. Potts for General Belknap?

A. I delivered the package to Mr. Potts.

Q. Now turn to the 4th of November, 1873?

A. November 4, 1873, one package, from New York, from C. P. Marsh, $1,500, to General W. W. Belknap, delivered to H. T. Crosby, for W. W. B.

Q. Who was H. T. Crosby?

A. H. T. Crosby was chief clerk of the War Department.

Q. He is now in the War Department, is he not?

A. He is still in the War Department.

Q. Did you deliver that to Mr. Crosby for General Belknap?

A. I did.

Q. Now turn to the 11th of April, 1874.

A. There appears on the 11th of April, 1874, one package from R. G. Carey & Co., New York, $1,500, to Hon. W. W. Belknap.

Q. Receipted for by whom?

A. The receipt is signed "W. T. Barnard."

Q. Do you know who Mr. Barnard is?

A. I know he is in the War Department, in the chief clerk's room.

Q. You delivered that package to him for General Belknap?

A. Yes, sir; for General Belknap, in the chief clerk's office.

Q. Now turn to the 25th of May, 1875.

A. May 25, 1875, I find entered one package, $1,000, from New York, from R. G. Carey & Co., to W. W. Belknap. The receipt is signed "H. T. Crosby."

Q. Do you know who H. T. Crosby was?

A. H. T. Crosby was chief clerk of the War Department.

Q. That was receipted for by him for General Belknap?

A. It is not so designated here.

Q. It is only signed "H. T. Crosby?"

A. That is all.

Q. Now turn to November 8, 1875.

A. I have November 9, 1875, here. I have one package from New York, value $500, from R. G. Carey & Co., New York, for Hon. W. W. Belknap. The receipt is signed "W. W. Belknap."

Q. In whose handwriting is that signature?

A. It seems to be W. W. Belknap's.

Q. Now turn to the 19th of January, 1876.

A. January 19, 1876, I find one package, value $2,000, from New York—no name given of the person who sent it—to Mrs. W. W. Belknap.

Q. By whom is that receipt signed?

A. It is receipted by "Mrs. W. W. Belknap, 2222 G street."

Mr. Manager McMAHON. We say to the gentlemen on the other side that we claim nothing from this shipment except as side-evidence of other facts that we expect to prove in the case. I desire to call the attention of the counsel on the other side to the fact that we want to know if they make any point on these signatures of General Belknap himself?

Mr. CARPENTER. We are not making any points at all.

Mr. Manager McMAHON. I observe that.

Mr. CARPENTER. We are respectful spectators.

Mr. Manager McMAHON. We are through with the witness.

The PRESIDENT *pro tempore*. Do counsel desire to ask the witness any questions?

Mr. CARPENTER. No, sir. We have a mere curiosity in knowing from the managers whether they claim anything from this last package of $2,000?

Mr. Manager McMAHON. I think not.

Mr. CARPENTER. You do not claim anything against Mr. Belknap on that account?

Mr. Manager McMAHON. I think not; but if in the course of the trial something that we do not now expect should be developed, we do not expect to be debarred from claiming that, of course.

H. T. CROSBY sworn and examined.

By Mr. Manager McMAHON:

Question. Look at the book produced by the last witness containing the receipt of November 9, 1875, and say in whose signature that receipt is.

Answer. It seems to be a receipt by W. W. Belknap.

Q. In whose handwriting is it.

A. It looks to me like his.

Q. Are you familiar with his handwriting?

A. I am quite familiar with it.

Q. You have seen it a good many times?

A. A great many times.

Q. Are you not sure that it is his handwriting?

A. I am as positive as I am of most signatures I am familiar with.

Q. Turn now to the 25th of May, 1875, and say by whom that receipt is signed?

A. By myself.

Q. For whom?
A. For General Belknap.
Q. Why did you sign your name to it when the package was for General Belknap?
A. It was usual for me to sign the receipts for express packages for General Belknap or any Secretary of War.
Q. Did you sign that for the Secretary of War?
A. Yes, sir.
Q. Did you hand that package over to him?
A. I suppose I did. I have no recollection of it now.
Q. Now turn to the 11th of April, 1874.
A. Under date of April 11, 1874, there appears a package for $1,500, the receipt signed by "W. T. Barnard."
Q. In whose handwriting is that receipt signed by Barnard?
A. It looks like his. I recognize it as his signature. I would ordinarily recognize it as his signature.
Q. What position did he hold?
A. He was clerk in the War Department, on duty with the Secretary of War.
Q. What room did he occupy in the War Department?
A. The same room with the Secretary of War.
Q. He was his confidential clerk, was he not?
A. Yes, sir.
Q. Pass to the next, November 4, 1873?
A. November 4, 1873, appears one package, $1,500; the receipt signed by "H. T. Crosby for General Belknap."
Q. Whose handwriting is that?
A. The receipt is in mine.
Q. You received that money?
A. Yes, sir; I suppose I did.
Q. Did you deliver it to the Secretary?
A. I think so.
Q. Turn now to April 18, 1871?
A. April 18, 1871, appears an entry, $1,500, W. W. Belknap, signed by John Potts.
Q. Who was John Potts?
A. John Potts at that time was chief clerk of the War Department.
Q. Is that his handwriting?
A. Yes, sir; I recognize it as his handwriting.
Q. Was he authorized to receive packages for the Secretary?
A. That I do not know.
Q. Did he in fact receive them?
A. He often received them.
Q. Turn now to January 17, 1871.
A. January 17, 1871, appears one package, $1,500, the receipt signed by W. W. Belknap.
Q. In whose handwriting?
A. It looks like General Belknap's signature.
Q. Is it his?
A. I think it is.
Q. Turn to November 2, 1870.
A. November 2, 1870, appears one package, $1,500, signed by W. W. Belknap himself.
Q. Now tell us in whose handwriting it is?
A. That appears to be General Belknap's signature also.
Q. What position do you occupy in the War Department, and for how long a time have you been there?
A. I have been there in various capacities as clerk for twelve or thirteen years.
Q. What connection had you with General Belknap at any particular time?
A. I was his confidential clerk.
Q. During what period?
A. During the years 1870, 1871, and a part of 1872.
Q. Up to what date in 1872? Do you remember?
A. I think until the 24th of July; somewhere thereabout.
Q. What position did you assume after you ceased to be his confidential secretary?
A. I was appointed chief clerk of the Department upon the death of John Potts.
Q. How long did you occupy that position?
A. I still occupy that position.
Q. Mr. Potts died in what year?
A. July, 1872.
Q. Have you made an examination of the records of the War Department for the purpose of ascertaining where General W. W. Belknap was upon the 25th of July, 1871?
A. Yes, sir.
Q. Where was he at that date?
A. I do not recollect.
Q. [Producing a letter.] You may have this letter, if it is in your handwriting, to refresh your memory. You can look over that letter.
A. [Examining the letter.] It is not in my handwriting, but I dictated it.
Q. Where was General Belknap on the 25th day of July, 1871?
A. I cannot state positively where he was.
Q. Was he in Washington City?
A. I do not know, but it appears from our records that he was absent.
Q. How do you make it appear from your records that he was absent?
A. By the manner in which the correspondence, the letters, indorsements of the Department, and orders were signed.
Q. Now turn to the 13th of June, 1872, and state whether he was in the city of Washington at that date.
A. I do not know of my own knowledge whether he was or not, but from the record it appears that a telegram was sent to him at West Point on the 12th and 16th of that month. No record as to the 13th appears.
Q. Where was he upon the 22d of November, 1872?
A. A telegraphic dispatch was sent to him at Chicago on the 19th, and one to New York on the 23d, but the records do not show where he was on the 22d, nor do I know myself.
Q. Where was he upon the 16th day of June, 1873?
A. The record appears to show him at West Point.
Q. The memorandum that you have there was made out at your dictation?
A. Yes, sir.
Q. From an inspection of the record?
A. From an inspection of the record.
Q. You were examined at one time, I believe, by a subcommittee of the board of managers?
A. Yes, sir.
Q. When General Belknap went out of office state whether any application was made to you by him for his papers.
A. No, sir; there was no application made by him. There was a direction given by him verbally to me to send him his private papers.
Q. Now state what character of papers you have, whether they are all of an official character or of another character besides official; and, if so, what term do you use to designate letters that appertain to business but are not really official letters?
A. It depends, I suppose, upon the taste of the person who has them in his possession as to what he calls them.
Q. Give us now an instance of that particular matter, whether there were several kinds of letters that General Belknap received.
A. There are, of course, letters private and letters public; letters which he regards as confidential and which he does not put on file, and letters which go regularly upon the public file. As to his own personal private matters he is at liberty to dictate, or any Secretary I have ever seen is at liberty to dictate, whether he shall put them upon record or not. It is a matter in his judgment.
Q. Did you have a book called an index of semi-official letters?
A. I had no book called an index or known by any such term. I kept a book, a memorandum of such letters as were received and handed to me for record in that book.
Q. Did those letters go upon the regular record of the War Department?
A. No, sir; I think they never did.
Q. There was a distinction made between the letters?
A. Yes, sir; they were considered private letters.
Q. What passed between you and the Secretary, Mr. Belknap, in regard to his letters after he went out of office? Give us about the language.
A. I think he merely said to me, "Send my private papers and other matter to me."
Q. The application that Mr. Marsh made to have Mr. Evans appointed; do you remember a letter like that?
A. Yes, sir.
Q. Was that among the files of the official letters of the Government?
A. No, sir; I think not; never.
Mr. Manager McMAHON. Before proceeding any further, we desire to notify the gentlemen on the other side that this is one of the documents which we have served a written notice on them to produce; and unless objection is made now, we shall proceed to examine in regard to the contents of that letter.
The PRESIDENT *pro tempore*. Is there objection? The Chair hears none.
Q. (By Mr. Manager McMAHON:) Give us the contents of that letter. If you have the letter, that would answer all the purposes.
Mr. CARPENTER handed a letter to the manager.
Mr. Manager McMAHON, (to the witness.) Look at that letter, and see if that is the letter that you handed to General Belknap. [Handing a letter.]
A. [Examining letter.] I suppose this was in the package of letters presented to him.
Q. You observe the handwriting?
A. Yes, sir.
Q. From whom did you get this letter?
A. I suppose I got it from General Belknap. I must have got it from him. At this period of time I do not recollect.
Q. You put that among the semi-official private letters. By whose direction was that done?
A. That was ordinarily assumed to be by direction of the Secretary when it was handed to me.
Q. I understood you to state a while ago that the classification of official and confidential letters depended upon the judgment of the person who received the letter.
A. Yes, sir.

Q. And this letter was handed to you as one of the confidential class which was indexed and did not go upon the public record.

A. Yes, sir.

Q. This never did go upon the public records, did it?

A. It never did.

Q. Who had possession of this letter when General Belknap went out of office?

A. It was one of a series of letters of the same character that had been stowed away in the bottom of an old book-case ever since I relinquished the position of clerk to General Belknap in 1872.

Q. Stowed away among the confiential, semi-official letters?

A. Yes, sir. There was no particular form for it. They were wrapped up in a package and put away.

Q. How did you come to get this particular letter and deliver it to General Belknap?

A. I delivered that with the other letters to him.

Q. Did not a conversation pass between you and Mr. William T. Barnard in regard to this letter?

A. I think there did.

Q. What was that conversation while you were searching for this letter?

A. I do not recollect.

Q. Were you not looking for the letters that related to the Fort Sill matter?

A. Probably I was; I do not recollect.

Q. And in looking for those letters you found this one?

A. That may be the case; I have not the recollection of it now.

Mr. Manager McMAHON. We desire the Secretary to read this letter now, and we offer it in evidence.

The Chief Clerk read as follows:

No. 51 WEST THIRTY-FIFTH STREET,
New York City, October 8, 1870.

DEAR SIR: I have to ask that the appointment which you have given to me as post-trader at Fort Sill, Indian Territory, be made in the name of John S. Evans, as it will be more convenient for me to have him manage the business at present.

I am, my dear sir, your very obedient servant,

C. P. MARSH.

P. S.—Please send the appointment to me, 51 West Thirty-fifth street, New York City.

Hon. W. W. BELKNAP,
Secretary of War, Washington City.

Q. (By Mr. Manager McMAHON:) Mr. Crosby, were you ever examined as to what papers relating to the Fort Sill matter were in the War Department and had been surrendered?

A. Yes, sir; I think I was.

Q. Before what committee?

A. The Judiciary Committee.

Q. In your testimony before the Judiciary Committee, did you refer to this letter?

A. I think not.

Q. How did we know that this letter was in existence and had been handed to you by General Belknap?

Mr. CARPENTER. Had you not better state that yourself?

Mr. Manager McMAHON. We want to find out if the witness does not know.

Mr. CARPENTER. You know a great deal better than the witness can tell.

The WITNESS. I do not know how you came to know about it. In fact it had almost passed out of my memory.

Q. (By Mr. Manager McMAHON:) It had passed out of your mind?

A. Yes, sir.

Q. Was this letter delivered by itself or with a general package? Was this paper delivered by you to General Belknap before you had sent the others or after?

A. My recollection is not very distinct, but I think at the present time that I delivered that letter before the package was delivered.

Q. Was it on the day he resigned or the next day that you handed this letter to him?

A. I do not recollect whether it was the day before, the day after, or the same day. It was thereabouts some time.

Q. And you handed him this letter by itself?

A. I am not positive about that.

Q. Was it at a request by him to look through for these Fort Sill papers?

A. That I do not recollect.

Q. Was General Belknap a subscriber for the New York papers?

A. The Department subscribed for the papers.

Q. Where were those papers put when delivered?

A. They were delivered to him sometimes.

Q. Was the New York Tribune one of those papers?

A. Yes, sir.

Q. For how many years has the New York Tribune been taken at the War Department and delivered there?

A. I should say ever since seven or eight years.

Q. Do you know that General Belknap was in the habit of reading and looking over the New York papers, say particularly the New York Tribune?

Mr. CARPENTER. One moment. Do the managers really think that is competent evidence?

Mr. Manager McMAHON. I think so. We propose to show something that was in the New York Tribune.

Mr. CARPENTER. To carry the knowledge of it up to General Belknap by the fact that he sometimes read the papers?

Mr. Manager McMAHON. We will carry it a little closer than that.

Mr. CARPENTER. Why do you not do it, then?

Mr. Manager McMAHON. It is only a question of the degree of evidence and not of the competency of evidence.

Mr. BLACK. Is it any evidence at all?

Mr. Manager McMAHON. I think it is good to go to a court or a jury as to whether it is a fair presumption of law.

Mr. BLACK. The courts have decided it over and over again.

Mr. Manager HOAR. We propose to add to the direct evidence that he knows the contents of a particular paper, that he was in the habit of reading that paper. It is confirmatory; that is all. It is not very strong.

Mr. Manager McMAHON. That is all there is of it. Do the counsel insist on their objection?

Mr. CARPENTER. We have not made any objection. We appeal to you.

Mr. Manager McMAHON. If you appeal to me, and let me have it all my own way, I will proceed.

(To the witness.) The question is whether General Belknap was in the habit of reading the New York Tribune.

A. I think it was customary for him to read the New York papers. Whether he particularly read the Tribune or not I cannot say.

Q. Have you any recollection of the attention of the Secretary of War being called to this article in regard to the Marsh matter in 1872?

A. I know the Secretary of War observed that article and read it.

Q. State to the court how you know that fact.

A. I think I heard him read it, if my recollection serves me.

Q. You think you heard him read it?

A. Yes, sir.

Q. Do you know of any order being based upon it, upon reading that article?

A. No, sir; not precisely that.

Q. Do you know of any order being issued about that time, after General Belknap had read this article in the New York Tribune?

A. I know that General Belknap read the article, and I know that he wrote an order to the Adjutant-General inquiring as to the truth or untruth of the matters set forth in that article so far as Fort Sill and Camp Supply were concerned. I think that that letter was produced in evidence by me before the Judiciary Committee.

Q. Have you the New York Tribune there?

A. No, sir.

Mr. Manager McMAHON. I think Mr. Spofford probably brought it in just now. If so, we will have it read.

[A file of the New York Tribune was produced and placed before the witness.]

Q. (By Mr. Manager McMAHON:) Turn to the Tribune of 16th of February, 1872. Is the article there?

A. [Examining.] Yes, sir. This is a copy of the same article.

Mr. Manager McMAHON. Let the Secretary read that article, if you please.

The CHIEF CLERK. This article is dated "Washington, Thursday, February 15, 1872." Passing over the first paragraph, the next one commences:

Army officers stationed at forts in the West complain of the extortions practiced by the post-traders and of the gross abuses practiced under the law which authorizes their appointment. These traders are given the exclusive privilege of selling goods upon the military reservations to the officers, soldiers, Indians, and emigrants. The privilege is so valuable that it is obtained by political or family influence at Washington by men who never go to the posts or engage in the business, but farm out the privilege to actual traders for sums amounting in some cases to $10,000 or $12,000 a year. The traders occupy relations to the Army similar to those the sutlers held during the war, with this exception: that the sutlers were under control of the post commanders, and the soldiers were protected against their rapacity by the power of a council of officers to fix a tariff of prices at which goods should be sold, whereas the traders are appointed by the Secretary of War, and, having no competition and being under no control, charge any price they please. The sutlers were abolished at the close of the war, and the Commissary Department was required to furnish the necessary articles formerly kept by the sutlers and to sell them to the soldiers at cost price. This law the commissaries found irksome, and they have always managed to evade it. Soon after it went into effect, the Adjutant-General issued an order allowing any one to trade at a military post who should show fitness to the department commander. This was a good arrangement for the troops, for it gave them the advantage of competition; but it did not suit the traders, who have always sought exclusive privileges. It lasted until the summer of 1870, when, on the recommendation of the Secretary of War, a section was put into the Army bill authorizing the Secretary to appoint one or more traders at each military post "for the convenience of emigrants, freighters, and other citizens." The section was plausibly worded and passed without objection. Under it the Secretary appoints but one trader at each post, and refuses to appoint more, so that this single trader, having a monopoly of all the business, plunders the officers and men by charging them outrageous prices. There is no escape from his rapacity, because the officers have no control over him as they had over the sutler. There is good authority for stating that traders' privileges are systematically farmed out by those who obtain them from the War Department. The Secretary is not charged with being cognizant of these practices, and probably has not been informed of them. One of the most outrageous cases of the kind is described in the following letter from an officer stationed at Fort Sill, Indian Territory:

"I have incidentally learned that you have a desire to know whether a bonus is required from the traders here, for the privilege of trading, and have been urged to write you the facts in the case. As there seems to be no secret made of the matter and as, in common with all others here, I feel it to be a great wrong I think you will readily excuse the presumption which my writing unasked by you might indicate. I have read the contract between J. S. Evans, a Fort Sill trader, and C.

P. or C. E. Marsh, of 1867 or 1870, Broadway, New York, office of Herter Brothers, whereby J. S. Evans is required to pay said C. P. or C. E. Marsh the sum of $12,000 per year, quarterly in advance, for the exclusive privilege of trading on this military reservation. I am correctly informed that said sum has been paid since soon after the new law went in force, and is now paid, to include some time in February next. This is not an isolated case. I am informed by officers who were stationed at Camp Supply that Lee & Reynolds paid $10,000 outright for the same exclusive privilege there. Other cases are talked of, but not corroborated to me; sufficient to state, the tax here amounts to near $40 per selling day, which must necessarily be paid almost entirely by the command, and you can readily see that prices of such goods as we are compelled to buy must be grievously augmented thereby. It, not being a revenue for the Government and Mr. Marsh being an entire stranger to every one at the post, it is felt by every one informed of the facts to be, as I said before, a very great wrong."

Q. (By Mr. Manager McMAHON:) Is that the article, Mr. Crosby?

A. That is the article.

Q. [Producing a paper.] Look at this order, a certified copy from the War Department, and see whether it is the order issued by the Secretary of War after reading that article in the New York Tribune.

A. [Examining the paper.] Yes, sir; that appears, to the best of my recollection, to be a true copy.

Mr. Manager McMAHON. Let the Secretary read that, date and all.

The Chief Clerk read as follows:

WAR DEPARTMENT,
Washington City, February 17, 1872.

The commanding officer at Fort Sill will report at once directly to the Adjutant-General of the Army, for the information of the Secretary of War, as to the business character and standing of J. S. Evans, post-trader at that post, whether his prices for goods are exorbitant and unreasonable or whether his goods are sold at a fair profit; whether the prices charged now and since his appointment to that position by the Secretary of War, under the act of July 15, 1870, are higher than those charged by him prior to that appointment, when he was trader under previous appointment; whether he has taken advantage of the fact that he is sole trader at that post to oppress purchasers by exorbitant prices; whether he charges higher prices to enlisted men than to officers; and whether he has complied with the requirements of the circular of the Adjutant-General's Office issued June 7, 1871.

The commanding officer is expected to make as full and as prompt report as is possible.

W. W. B.

Mr. Manager McMAHON. That is sufficient.

Mr. CARPENTER. I understand that document has not been fully read yet.

Mr. Manager McMAHON. I think it has. That is the whole of the letter.

Mr. CARPENTER. No; it is all one letter to the Adjutant-General, containing two different subjects. Let the rest be read.

The Chief Clerk read as follows:

Also similar letter to commanding officer at Camp Supply in regard to the post-trader there, A. E. Reynolds.

The foregoing instructions were communicated to the commanding officers of Fort Sill and Camp Supply, Indian Territory, by the Adjutant-General, in letters dated February 19, 1872.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, March 14, 1876.

Official copy.

E. D. TOWNSEND,
Adjutant-General.

Mr. CARPENTER. That is it.

Mr. Manager McMAHON, (to the witness.) Do you remember any other time that General Belknap's attention was called to the situation of affairs at Fort Sill by other publications?

The WITNESS. No, sir; I do not.

Q. (By Mr. Manager McMAHON:) Have you any recollection of the fact that General Hazen testified before the Military Committee of the House not long after the date of this letter?

A. No, sir; I knew nothing about General Hazen's testimony.

Q. Do you know anything about the fact as to whether any person held a communication with General Belknap in regard to General Hazen's testimony of your own knowledge?

A. No, sir; I do not.

Q. Did General Belknap, to your knowledge, know that the testimony had been given by General Hazen before the Military Committee in regard to Fort Sill?

A. I think he did know.

Q. State how you knew that he did know.

A. I cannot tell now how I derived that feeling. I think so.

Q. You think he did know?

A. I think he did know.

Q. Why?

A. Probably from conversations. I cannot recollect distinctly now what it was that created that impression.

Q. Give us your best impression of the conversation that you had with General Belknap about that testimony.

A. I have no recollection that is at all distinct about any conversation with General Belknap in regard to that testimony.

Q. What position did you occupy at that time in the War Department, say in February and March, 1872?

A. I was confidential clerk to the Secretary at that time.

Mr. CARPENTER, (to Mr. Manager McMAHON.) Will you not let him follow up and state in that connection what was done by General Belknap in regard to that Fort Sill matter?

Mr. Manager McMAHON. Suppose we first put in the testimony of General Hazen before the Military Committee, as published in the report. We shall put in the order afterward.

Mr. CARPENTER. I should be astonished at your reading testimony taken somewhere else.

Mr. Manager McMAHON. That may be so; but if it concerned General Belknap, and it was called to his attention, it certainly has a very distinct bearing upon the animus and the knowledge, and I might say the guilty knowledge, of the Secretary.

Mr. CARPENTER. What I was speaking about to you was whether you would not at that point put in the fact that in obedience to this order the Adjutant-General did write out there, and that General Grierson or somebody wrote back, and upon the strength of that an order was immediately made on that subject, referring the whole matter of fixing the prices to a council of administration.

Mr. Manager McMAHON. You have it all wrong, if we understand the case.

Mr. CARPENTER. You do not understand the case, then. I thought you did.

Mr. Manager McMAHON. I think by the time we get through it will be developed who understands it.

Mr. CARPENTER. Very well.

Mr. Manager McMAHON. We propose to show, and we now offer to test the question, the testimony of General Hazen before the Military Committee of the House on the 22d day of March, 1872, and we propose to supplement that with the orders issued from the War Department on the 25th day of March, 1872, which was a very good order, but did not quite reach the Fort Sill case. We offer it now, and desire that the testimony of General Hazen, as published in an official document, shall be read.

Mr. CARPENTER. We make no objection, Mr. President, except that we feel that this court will not hear any testimony that is not material and pertinent.

Mr. Manager McMAHON. It refers directly to the Fort Sill business.

Mr. CARPENTER. But it is testimony taken not only not in this Chamber but taken *in pais*.

Mr. Manager McMAHON. Suppose that General Hazen had taxed General Belknap with the facts stated in his testimony, would it not be perfectly competent, and would it not be the very best kind of evidence to show what official action General Belknap took when those facts were brought to his knowledge?

Mr. CARPENTER. The particular point I want to suggest, to the consideration of the manager only, is this, that I never heard one man tried on testimony given in some other tribunal. Without proof that the witness was dead or could not be called, and that the party was present and cross-examined him, it cannot be done in a civil case. I suggest to the managers that it would be remarkable if you could read a deposition taken somewhere else.

Mr. Manager McMAHON. Allow me to put the case again, and so astute a gentleman ought to be able to give me a categorical answer. Suppose that a friend had taken this testimony of General Hazen to General Belknap and had read it to him, and General Belknap had said, "It is all true," would not what General Belknap thus stated be perfectly competent evidence, not only competent but the very best kind of evidence as to the facts contained therein? Suppose that instead of stating "It is true," he simply keeps quiet. That is simply one kind of confession, but it is just as competent to produce that in evidence as it would be to produce his absolute confession that it was true; and therefore it is a very common thing in criminal cases, when a man is taxed with a crime or the charge of a crime is brought home to his knowledge, to show how he acted under the circumstances as affording the very highest proof of the man's innocence or his guilt.

Mr. CARPENTER. I have never heard that method resorted to until it was first shown that it had been brought to his knowledge.

Mr. Manager McMAHON. The witness has just testified that he knew all about it.

Mr. CARPENTER. No; he has not so testified.

Mr. Manager McMAHON. He said they had conversations about it.

Mr. CARPENTER. He says he has a vague, a very vague, impression that Mr. Belknap knew that Hazen had testified to something; but no pretense that Belknap said that what Hazen stated was true.

Mr. Manager McMAHON. On the testimony that has been offered, I submit now that we propose to read the testimony of General Hazen as published in the official report of the proceedings before that committee, published by order of Congress.

Mr. SHERMAN. I should like to ask the witness a question through the Chair. Did General Belknap read or hear the testimony of General Hazen?

The PRESIDENT *pro tempore*. The witness will answer.

The WITNESS. I do not know, sir.

Mr. SHERMAN. I will ask whether that testimony of General Hazen was published in the public journals and brought to the knowledge of General Belknap?

The WITNESS. I do not know.

Q. (By Mr. Manager McMAHON:) You had conversations with him, however, about it?

A. I do not know that I did have conversation about it.

Q. Do you remember General McDowell coming to see him about it?

A. Yes, sir.

Q. What was the purport of the communication of General McDowell to him?

A. I do not know. The conversation did not take place in my presence at first.

Q. Do you know of any order being issued by the Secretary of War, which was based, or supposed to be based, upon information that was derived from the testimony of General Hazen?

A. No, sir; I do not. I was not aware that that had any effect. I had no knowledge about it. I know that General McDowell came and had an interview with the Secretary of War in the room adjoining the Secretary's usual office-room.

Q. About what?

A. What their conversation was there, I do not know.

Q. How do you know that it related to General Hazen's testimony?

A. I did not say that it did.

Q. When I asked you whether General McDowell came to see him about General Hazen's testimony, how did you come to connect the two and say that he did?

A. I did not say that I knew that General McDowell came about General Hazen's testimony.

Mr. Manager McMAHON, (to the counsel for the respondent.) Do I understand the gentlemen now to object to the testimony? Because I think if it can be received without objection it is not worth while for us to consume time in argument.

Mr. BLACK. We think it safe to appeal to your conscience whether you will undertake to make a confession out of an *ex parte* statement made by a witness which the accused party never saw.

Mr. Manager McMAHON. I am young enough yet to have a conscience, but I have practiced too long to have any opinion.

Mr. BLACK. Then let that conscience have fair play on this occasion.

Mr. SHERMAN. I object to the testimony at this stage of the proceeding.

Mr. Manager McMAHON. We have the proof of this matter more complete, and will withdraw the offer at the present time.

(To the witness.) Mr. Crosby, what conversation took place between you and General Belknap, if any, in regard to the authorship of that article in the New York Tribune?

The WITNESS. I have no recollection of any conversation about the authorship of that article.

Q. (By Mr. Manager McMAHON:) Do you know whether General Belknap made any efforts to discover who had written it?

A. I do not.

Q. Do you know whether he did discover who had written it?

A. I do not know that.

Q. Do you know whether he discovered who had inspired the writing of it?

A. I have no means of knowing whether he discovered it or not.

Q. Do you mean to say that you had no conversation with him about the authorship or the person who inspired the writing of that article in the New York Tribune?

A. I do not recollect to have ever had any conversation with him about it. I may have heard him say something about it. My general impression is very vague, as I said before, about it.

Mr. Manager McMAHON. We are through with Mr. Crosby for the present; but until we can find some little notes of testimony that we have, we shall not discharge him finally.

The PRESIDENT *pro tempore*. If there are no other questions the witness will be excused for the present.

Mr. SARGENT. Mr. President, I offer the following order:

The PRESIDENT *pro tempore*. The proposed order will be read.

The Chief Clerk read as follows:

Ordered, That at half past five o'clock this court take a recess until half past seven this evening.

Mr. Manager McMAHON. Before that is put we should like to be heard on that question. I think we shall be unable to go on this evening. Most of our witnesses are on the road, and will not be here until to-morrow morning.

Mr. BOGY. I object to that order.

The PRESIDENT *pro tempore*. Debate is not in order. The Chair will put the question to the Senate. The question is on the order proposed by the Senator from California, [Mr. SARGENT.]

The order was not agreed to.

Major-General IRWIN McDOWELL called and examined.

By Mr. Manager McMAHON:

Question. Where are you stationed at the present time, General?

Answer. My present station is San Francisco, California.

Q. Were you in Washington City when the Military Committee of the House in 1872 was taking testimony in regard to re-organizing and reducing the staff of the Army?

A. I do not recollect, but I think I was.

Q. You are acquainted with General Hazen?

A. Well.

Q. Do you remember of his having given certain testimony before that committee in regard to post-tradership transactions at Fort Sill?

A. I have no knowledge of it at all of my own.

Q. From whom did you derive information that testimony had been given by General Hazen?

A. I cannot say. I do not recollect at this time how that came to my knowledge.

Q. Did it come to your knowledge by some means or other?

A. I think it did.

Q. Can you now remember the person who communicated the fact to you?

A. Perhaps I had better state the case in my own way, and it will answer the purpose better than these questions.

Q. That will be better, perhaps.

A. I was in command of the Department of the East, stationed in New York City. I met accidentally Mr. Whitelaw Reid and referred to some statement I had seen in the New York Tribune or other papers and taxed him with it. I thought it was unfair; I did not believe it to be true. The old Tribune used to have many articles against the Army, and I used to tell Mr. Whitelaw Reid that on military matters it was never right, even by mistake. It was a part of this same chatting with him in reference to this article. He told me this was true and there was more beyond it. It was in reference to Fort Sill; it was in reference to the statement made in the paper that the person in charge of the tradership at Fort Sill was paying to the person who held the appointment, as I understood in New York, a large sum of money, and the person in New York gave no consideration for it.

Mr. CARPENTER. I understand that this conversation between third persons is within the conscience of the managers.

Mr. Manager JENKS. It is merely introductory.

Mr. Manager McMAHON. I know of no rule of evidence in regard to conscience at all.

The WITNESS. It was in reference to how I came to the knowledge of these facts. I do not know whether I came to Washington on purpose or whether I came here incidentally in the course of my duty, for at that time Washington and the country south to a certain extent was under my command, so far as the military forces stationed in it were concerned. I came to Washington and saw the Secretary of War. I called his attention to what I had been told, and told him that it seemed to me that it was a hard thing upon the people at Fort Sill to have to pay this heavy tax, and it was a thing that would be damaging if it were not at once corrected. I cannot now, at this distance of time, tell whether this was the first time I saw him, or immediately after, but it was in the morning of the day that I first arrived, and he then asked me to draw up an order to correct this matter, and I did so. That order, I think, is dated some time in March, 1872, and was meant to correct the evils complained of at that time and charged to exist at Fort Sill. When I drew it up the Secretary said that he had wished to draw up such an order as that before. He said, I think, that there had been some difficulty raised by the judge advocate who was acting somewhat as the legal adviser of the War Department; that inasmuch as these post-traders were not sutlers, were not military appointees, and had no reference in their appointment to the Army, but were for the advantage and convenience of those stationed at posts, there would be no right in the Military Department assuming to control them. I think that was the difficulty suggested at the time; at all events, there was some difficulty in the way, as the Secretary told me. I told him that it seemed to me, as he had a monopoly in his hands, it would be simply the proper discharge of his duties in regulating that monopoly to see that it was not abused. He concurred with me, and if you will look at the order—I have it not now, and I do not recollect the date of it, but I think some time in March, 1872—you will see that it corrected the very evils complained of; that is to say, it put these post-traders, so far as the charges they were to make on their sales were concerned, subject to the council of administration of the post, the council of administration consisting of the three highest officers at the post under the commanding officer; that the council of administration was to take into account the original cost, freight, and the fact that the post-trader, unlike the sutler, whom he is generally supposed to have succeeded, had no lien on the soldier's pay. It also provided that the post-trader should habitually reside at the post; that he should not sell, that he should not transfer, that he should not assign, that he should not sublet or farm out his position. I do not recollect all the terms, but he should not do any of the things complained of, but should carry it on in good faith himself. It gave him a certain time to do this or to give up his appointment.

Q. (By Mr. Manager McMAHON:) Now, before you go any further, your understanding of the situation at Fort Sill was that the man who held the appointment lived in New York. Is not that correct?

A. That was my impression at the time.

Q. And that the man who resided at Fort Sill was simply a person who did business in his name?

A. I do not know as to that. It was a person who was working under him, or with him, or did so for some consideration, or it was transferred to him—some of those business terms that I do not exactly understand.

Q. In other words, you thought Marsh was the post-trader and Evans the person who actually did the business?

A. The order itself will show very clearly what the impression was.

Q. And in order to correct this matter you added to this order a provision that the post-trader should reside at the post?

A. Should habitually reside at the post. I did that because it is sometimes very convenient that a post-trader should be at New York or San Francisco, if he is a partner, because in his purchases and in his business arrangements he may find it necessary not to be at the post.

Q. When you came to Washington, state whether you found General Hazen here.

A. I do not think I saw General Hazen then.

Q. State whether any person had given you information in regard to his having testified.

A. General GARFIELD did.

Q. He called your attention to it?

A. No, I called his attention to it, and he then said that General Hazen had testified to what was stated in the New York papers; and this order that I drew up I talked over with General GARFIELD. Perhaps I may have written it in his room; I do not remember. He saw it, at any rate, and he concurred in it. It seemed to him to cover the whole ground, as it did to me.

Q. In the conversation between you and General Belknap, besides referring to this article in the New York Tribune, did you refer to the fact that General Hazen had testified before the Military Committee?

A. I think that I mentioned the fact that I learned from General GARFIELD that General Hazen had done so. I think General Belknap told me that General Hazen had done so and had said substantially the same thing. I think General Belknap was indignant at General Hazen having done so instead of having come to him. I think he thought he owed it to him to have made this statement to him personally instead of going elsewhere.

Mr. CARPENTER, (to Mr. Manager MCMAHON.) Ask him in that connection what would be the military rule on that subject.

Mr. Manager MCMAHON. My conscience would not permit that. (To the witness.) Look at that paper and see whether that is the order to which you have referred. [Exhibiting a paper to the witness.]

A. [Examining the paper.] That is the order.

Mr. Manager MCMAHON. I ask the Secretary to read it.

The Chief Clerk read as follows:

[Circular.]

WAR DEPARTMENT,
Washington City, March 25, 1872.

I. The council of administration at a post where there is a post-trader will from time to time examine the post-trader's goods and invoices or bills of sale; and will, subject to the approval of the post-commander, establish the rates and prices (which should be fair and reasonable) at which the goods shall be sold. A copy of the list thus established will be kept posted in the trader's store. Should the post-trader feel himself aggrieved by the action of the council of administration, he may appeal therefrom through the post-commander to the War Department.

II. In determining the rate of profit to be allowed, the council will consider not only the prime cost, freight, and other charges, but also the fact that while the trader pays no tax or contribution of any kind to the post fund for his exclusive privileges, he has no lien on the soldier's pay, and is without the security in this respect once enjoyed by the sutlers of the Army.

III. Post-traders will actually carry on the business themselves, and will habitually reside at the station to which they are appointed. They will not farm out, sublet, transfer, or sell or assign the business to others.

IV. In case there shall be at this time any post-trader who is is a non-resident of the post to which he has been appointed, he will be allowed ninety days from the receipt hereof at his station to comply with this circular or vacate his appointment.

V. Post commanders are hereby directed to report to the War Department any failure on the part of traders to fulfill the requirements of this circular.

VI. The provisions of the circular from the Adjutant-General's Office of June 7, 1871, will continue in force except as herein modified.

By order of the Secretary of War:

E. D. TOWNSEND,
Adjutant-General.

Mr. CONKLING. Mr. President, may I inquire, through the Chair, if that is the proper way, whether that is the order read by the manager who opened the case and commented upon by him?

Mr. Manager LYNDE. Yes, sir; it is.

Q. (By Mr. Manager MCMAHON:) I understood you to say, General McDowell, that in conversing with General Belknap you found that he had heard the statements that Hazen had made and was indignant about them?

A. I mentioned to him the fact that General Hazen had stated them substantially as I learned from General GARFIELD; then he was indignant that General Hazen should have gone to the committee to make the statements instead of reporting them to him.

Mr. Manager MCMAHON. We have no more questions to ask.

The PRESIDENT *pro tempore*. The witness will be excused.

Mr. LOGAN. Inasmuch as there is no examination on the other side, I wish to ask if it is competent for me to put a question to the witness?

The PRESIDENT *pro tempore*. It is.

Mr. LOGAN. I desire General McDowell to state, as an officer of the Army, what the rule would be where a discovery was made by an officer of irregularities? What would his duty be in reference to giving information to his superior officer?

A. I think the ordinary, strict, formal rule would be for him to make a report of it to the staff officer of his next commander.

(By Mr. LOGAN:)

Q. In that way the report would be sent to the War Department?

A. Undoubtedly, if it was not within the competency of that immediate superior to dispose of the case, he would refer it to the one where the authority lodged that had cognizance of the matter.

Q. (By Mr. Manager MCMAHON:) That rule would not prevent a military man from giving evidence before a committee if he were subpœnaed before that committee to testify?

A. That is a question you can better answer than myself.

Mr. Manager MCMAHON. I simply wanted to put the question to you.

Mr. CARPENTER. Ask him whether his military duty would require him or permit him to correspond with Congress or any member of Congress on the subject before having transmitted intelligence through the regular military channel.

Mr. Manager MCMAHON. We are not trying General Hazen now.

Mr. CARPENTER. Then you do not want to put that question?

Mr. Manager MCMAHON. Not just now.

Mr. CARPENTER I wish you would put it.

Mr. Manager MCMAHON, (to the witness.) That is all.

The PRESIDENT *pro tempore*. The witness is excused.

The WITNESS. Do I understand that I am discharged?

The PRESIDENT *pro tempore*. Can the witness be discharged?

Mr. Manager MCMAHON. I prefer that the witness should stay over until to-morrow at any rate.

The PRESIDENT *pro tempore*. The witness will take notice.

Mr. Manager MCMAHON. Now, if the Senate please, we propose to offer the testimony of General Hazen, as taken before the committee, for this reason and this purpose: We find from two different sources that General Belknap is advised of the fact and becomes indignant with the knowledge that General Hazen has testified to the existence of certain abuses at Fort Sill which lay directly within his province to correct.

Mr. CARPENTER. Which he did correct.

Mr. Manager MCMAHON. Which he did not correct. The order will speak for itself. I lay particular stress upon the word "not," because the papers together will prove this. We now propose to have read to the Senate the testimony of General Hazen, because in a trial of this character we take it to be the duty of an officer in General Belknap's position, when he is aware that such charges have been made and sworn to by a high officer, to acquaint himself with the facts and the details of the facts. I think we have laid a sufficient basis now to read this testimony to the court.

Mr. EDMUNDS. Have you charged him in the articles with any crime of omission in this regard?

Mr. Manager MCMAHON. We have charged him in the articles, if the Senator will pardon me, with having knowingly received certain moneys which were the fruit of a corrupt arrangement in regard to the post-tradership at Fort Sill. One of the important items in that connection is his knowledge of the existence of the evil. We propose to show, and we claim that we have shown up to this point, that he knew that Marsh was the post-trader and not that Evans was the post-trader. The testimony of General Hazen, which we propose to offer, is based upon the idea that Evans was the post-trader, and not Marsh.

Mr. CARPENTER. If the testimony was based on a false assumption, it would not be very valuable *prima facie*.

Mr. Manager MCMAHON. Then we offer it for this purpose: to show that the accused, who did know the true state of the case, only corrected the evil to the extent to which it was made apparent in the testimony, and the evil that was not discovered in the testimony as published to the world was not corrected, although it lay in his breast, and he knew it. That is the purpose for which we offer it.

Mr. CARPENTER. You do not prove by anybody that General Belknap ever read that testimony to know what it was. The indignation arose from the fact that he had been talking before a committee when he ought to have gone through directer channels, through the Army.

Mr. Manager MCMAHON. I suppose it was on that indignation that he sent General Hazen to the Arctic regions.

Mr. HOWE. Do I understand that the testimony offered is objected to?

The PRESIDENT *pro tempore*. Is there objection to the testimony of General Hazen being read? The Senator from Ohio objected a few minutes ago.

Mr. SHERMAN. Some testimony has been taken since then, but it would not change the objection, in my judgment.

The PRESIDENT *pro tempore*. Objection is made.

Mr. FRELINGHUYSEN. I should like to inquire the object of offering that testimony, whether it is to prove the truth of the facts stated in the testimony or not.

Mr. Manager MCMAHON. By no means. It is to prove that the facts stated there were substantially communicated to General Belknap, and, as a public officer, that he had knowledge of the testimony as there taken.

Mr. CONKLING. If I may inquire, Mr. President, I should like to do so, is the foundation of that idea the testimony delivered by General McDowell that the Secretary of War alluded to the fact that General Hazen had made statements about this subject which he had not made to him? Is that the testimony upon which the Senate is asked to vote that the respondent here was charged with a knowledge of this testimony so as to admit it as a declaration made to him?

Mr. Manager HOAR. If I may be permitted to make a suggestion, I understand that General McDowell's testimony is that General Belknap said to him that General Hazen had testified in substance to the same matters which were contained in the New York Tribune article.

Mr. Manager MCMAHON. Yes, he did.

Mr. Manager HOAR. Therefore stating to him a knowledge of the substance of General Hazen's testimony. Now, if he had that knowledge of the substance of General Hazen's testimony, it tends to show that he knew that these periodical payments of money which came to him from Marsh were payments of money that had come to Marsh from the post-trader. If I am in error as to the extent to which General McDowell's statement went, I can be corrected by referring to it. In other words, if General Belknap was receiving once every

three months a sum of money from Marsh in New York, it is important for the Senate to know whether Belknap was informed that those moneys were moneys which were being improperly paid in consequence of this bargain of the post-trader at Fort Sill to Marsh; in other words, that he knew where the money he was receiving came from. The article in the New York Tribune contains a distinct assertion of those payments by Evans to Marsh, and, as I understand it, the testimony of General Hazen contains in substance the same thing. It is therefore important not as proving the truth of anything that General Hazen said, but as proving that the Secretary of War was notified that such thing was said at that time.

Mr. HOWE. I ask that the reporter may read the testimony of General McDowell upon that point.

Mr. BOGY. I should like to make an inquiry of the manager who has been examining the witness as to the character of the pamphlet purporting to contain the testimony of General Hazen, whether it is an official document, and published by whose authority? What is the character of the pamphlet containing that testimony?

Mr. Manager McMAHON. It is—

House of Representatives Report No. 74, Forty-second Congress, third session. Army staff organization.

February 2, 1873.—Ordered to be printed, and recommitted to the Committee on Military Affairs.

Mr. Coburn, from the Committee on Military Affairs, made the following report.

It is a public document, published by order of Congress.

Mr. BOGY. It is, then, an official document.

Mr. Manager McMAHON. I so understand.

Mr. HOWE. I ask the reporter to read the testimony for which I have called.

Mr. BOGY. I should like to know if it be an official document containing testimony taken under oath?

Mr. Manager McMAHON. Yes, sir.

The PRESIDENT *pro tempore*. The reporter will now read what has been called.

The Official Reporter read from his short-hand notes of General McDowell's testimony, as follows:

Question. In the conversation between you and General Belknap, besides referring to this article in the New York Tribune, did you refer to the fact that General Hazen had testified before the Military Committee?

Answer. I think that I mentioned the fact that I learned from General GARFIELD that General Hazen had done so. I think General Belknap told me that General Hazen had done so and had said substantially the same thing. I think General Belknap was indignant at General Hazen having done so instead of having come to him. I think he thought he owed it to him to have made this statement to him personally, instead of going elsewhere.

The PRESIDENT *pro tempore*. Objection being made, the Chair will submit the question to the Senate, Shall this testimony of General Hazen be admitted?

Mr. BOGY. I call for the yeas and nays.

The yeas and nays were ordered; and being taken, resulted—yeas 20, nays 31; as follows:

YEAS—Messrs. Alcorn, Bayard, Bogy, Caperton, Cockrell, Cooper, Davis, Dennis, Harvey, Key, McCreery, Maxey, Norwood, Randolph, Sargent, Stevenson, Wallace, Whyte, Withers, and Wright—20.

NAYS—Messrs. Allison, Anthony, Booth, Bruce, Cameron of Wisconsin, Conkling, Cragin, Dawes, Edmunds, Ferry, Frelinghuysen, Hitchcock, Howe, Ingalls, Jones of Nevada, Kelly, Kernan, Logan, McMillan, Merrimon, Mitchell, Morrill of Maine, Morrill of Vermont, Paddock, Patterson, Ransom, Saulsbury, Sherman, Spencer, Thurman, and Windom—31.

NOT VOTING—Messrs. Barnum, Boutwell, Burnside, Cameron of Pennsylvania, Christiancy, Clayton, Conover, Dorsey, Eaton, Goldthwaite, Gordon, Hamilton, Hamlin, Johnston, Jones of Florida, McDonald, Morton, Ogiesby, Robertson, Sharon, Wadleigh, and West—22.

The PRESIDENT *pro tempore*. The Senate declines to admit the testimony.

Mr. SHERMAN. I move, if it is convenient to the parties now, that the court adjourn.

Mr. KERNAN. To what hour?

Mr. SHERMAN. I should propose eleven o'clock to-morrow. ["O, no."]

Mr. KERNAN. That will do.

Mr. SARGENT. We may want some time for the appropriation bills in the morning. It seems to me that the court had better adjourn to twelve o'clock, and give us the hour before that for legislative business.

Mr. SHERMAN. I have no objection to that.

The PRESIDENT *pro tempore*. The Senator from Ohio moves that the Senate sitting for the trial adjourn.

The motion was agreed to; and (at five o'clock and twenty-five minutes p. m.) the Senate sitting for the trial of the impeachment adjourned until to-morrow at twelve o'clock.

FRIDAY, *July* 7, 1876.

The PRESIDENT *pro tempore*, (at two o'clock p. m.) The Senate resumes its session in trial.

The usual proclamation was made by the Sergeant-at-Arms.

Messrs. LORD, LYNDE, MCMAHON, JENKS, LAPHAM, and HOAR, of the managers on the part of the House of Representatives, appeared, and were conducted to the seats assigned them.

The respondent appeared with his counsel, Messrs. Blair, Black, and Carpenter.

The Secretary read the journal of proceedings of the Senate sitting yesterday for the trial of the impeachment of William W. Belknap.

The PRESIDENT *pro tempore*. The Senate is now ready to proceed. The managers on the part of the House will continue with their evidence in support of the articles of impeachment.

Mr. CARPENTER. Mr. President, I desire to state that yesterday we cross-examined none of the witnesses and made no objections to questions propounded by the honorable managers. We had not at that time been able to have a consultation among ourselves on that subject, and had concluded to leave the case entirely in the hands of the honorable managers. But one day's experience satisfied us that that was a mistake on our part. The method of examination on the part of the honorable managers was not satisfactory to us, and we think it would do injustice to the case to permit it to proceed further in that manner. Our doubt about taking any part in the trial beyond that of spectators was that it might be considered that by doing so we might waive or lose rights in the point upon which we rest this case, namely, that there is no jurisdiction to try; but after an examination of some authorities upon that subject, and a full consultation, we have come to the conclusion as counsel that inasmuch as the Senate has made an issue we can waive nothing and forfeit nothing by taking advantage of our right to cross-examine witnesses. We now ask the indulgence of the Senate to recall General McDowell for the purpose of putting some questions to him in cross-examination.

Mr. Manager McMAHON. That had better be done at a later stage. There are other witnesses here from a distance ready to testify, who are anxious to go home.

Mr. CARPENTER. General McDowell is here from a distance, and away from the performance of his official duties, and he is very anxious to get through and return to the discharge of his duties. Therefore, I ask the Senate at this point to give us permission to recall General McDowell for cross-examination.

Mr. Manager McMAHON. Mr. President and Senators, the managers certainly object at this particular stage of the case that they shall be interrupted in their course of examination because the gentlemen upon the other side, either for want of consultation or from overconfidence, declined to cross-examine a particular witness who was upon the stand and discharged fully from attendance upon this court except in so far as we requested him to remain another day. We have witnesses in attendance who are here at very great inconvenience to themselves; men who occupy responsible positions in banking establishments and other places, who are ready to testify and who want to go home. General McDowell can stay until we get through at least with them, I think. I make no objection to the right to recall him. We concede it as a right.

Mr. CARPENTER. Then we recall him.

Mr. Manager McMAHON. But at the proper time; not now.

The PRESIDENT *pro tempore*. Counsel for the accused ask to have the witness, General McDowell, recalled for the purpose of cross-examination. The Chair will submit the question to the Senate.

Mr. CONKLING. I inquire, is the request of the counsel to cross-examine the last witness upon the stand, the witness examined yesterday after whom no other witness has been called?

Mr. CARPENTER. Yes, sir.

Mr. CONKLING. I did not hear the name.

Mr. CARPENTER. We ask to recall General McDowell, who was on the stand when the Senate adjourned last evening.

The PRESIDENT *pro tempore*. Shall he be recalled?

The question being put, it was determined in the affirmative.

Major-General IRWIN MCDOWELL, recalled.

The PRESIDENT *pro tempore*. The Chair will state that the witness asks the privilege to correct the last statement he made. The Chair hears no objection, and he will make the correction he desires.

The WITNESS. It was the last question put to me yesterday. In fact I did not answer it.

Mr. Manager McMAHON. Do I understand, General, that you desire me to put that question again?

The WITNESS. No; I desire to correct the answer that I made to it, and to say that it would be the duty of an officer subpœnaed before a committee of Congress to answer such questions as the committee might ask him touching the public service of which he had knowledge.

Cross-examined by Mr. CARPENTER:

Question. Would it be the duty of an officer to volunteer information by letter or otherwise to members of Congress in regard to abuses connected with the service with which he was acquainted?

A. I do not know of any such duty imposed upon him by the articles.

Q. Is it not his duty, on the other hand, to make report of all such things through the regular military channels?

A. That I answered yesterday: yes.

Q. When you called on General Belknap in regard to the alleged abuses at Fort Sill, did not General Belknap say to you, "Well, General, you know what to do; now sit down; you draw an order that will correct it?"

A. I cannot at this day recall the conversations, for there were several of them, that took place between the Secretary and myself in reference to that subject. I called upon him at his house, then diagonally opposite the Arlington, and said to him that I had something to say that concerned the public service and also concerned him personally. After I had disclosed what I had to say, either at that particular time or not long afterward, he substantially said as you have asked.

Q. Did he at that time or at any time show the slightest reluctance to make an order which would correct any abuse at Fort Sill?

A. No reluctance. The only obstacle that he seemed to have in the way was a question, as I understood him, which he had referred to the Judge-Advocate-General, and which the Judge-Advocate-General had answered, to the effect that there was a difficulty in him as Secretary of War controlling by military authority the action of these post-traders.

Q. Was not the doubt this: Whether it would be legal for the Secretary of War to direct the council of administration to fix the prices at which the traders should sell?

A. That is what I understood; and that is what I think I said substantially, from the fact that they were not appointed for the Army but for emigrants and travelers.

Q. But did not the Secretary of War insist, notwithstanding the doubts suggested by the Judge-Advocate-General, that he would make such an order?

A. I think he yielded to my argument in that matter.

Q. And consented that the order should be made, and directed you or requested you to draw such an order as would cure the difficulty?

A. As I think, yes, sir.

Q. You have been a good many days in the Army; and now I want to ask you, as an expert on that subject, whether that order as you drew it would not have corrected all abuses there if it had been enforced?

A. I thought so then and think so now.

Mr. Manager McMAHON. Such questions as that I think do not require any expert.

Mr. CARPENTER. I think they do. I do not think we know enough about the matter to tell.

The PRESIDENT *pro tempore*. The Chair will remind the gentlemen that they must rise to speak, and address the Chair. The Chair will insist upon it.

Mr. Manager McMAHON. We withdraw any objection to the question.

Q. (By Mr. CARPENTER.) In regard to the post-trader residing at the post, was there any object in that except to keep him at all times subject to military regulation and bring him more nearly within the control of the men who ought to control; the military officers?

A. My own view in drawing up that order was aimed at the question in hand of there being what I supposed to be a post-trader at Fort Sill residing in New York.

Q. Would it make any difference whether he resided in New York or any other place, provided the rates at which he must sell were fixed?

A. I do not know whether it would or not.

Q. Can you conceive any difference?

A. I will only say what was in my mind at the time I drew the order up, that it was with reference to correcting an admitted abuse.

Q. The abuse, as you understood it, was sales at extravagant prices, was it not?

A. No, it was a man holding a place and exacting or receiving a large sum of money for it, having no capital, and doing no service for the money he received.

Q. Is there any way that that could injure the soldier or the country, unless he charged higher prices in consequence of that arrangement?

Mr. Manager McMAHON. Wait a moment. The objection we make to the question is that it is an endeavor to exculpate the accused by simply proving that he did not hurt the soldiers, although he may have hurt Evans. It seems to me that in the trial of a person for official malfeasance in an impeachment case, if we prove that the Secretary of War is in a corrupt combination with a person who has procured an appointment, by which the person who gets the appointment, for example—and I will give the example, Evans—is to divide the money that Evans may be able to force out of this person, to say that that is innocent simply because it does not raise the price of provisions at the garrison or the price of thread or cotton or whatever else may be wanted there, is certainly to the managers something new in the development of this case and of the theory of the defense. We do not care whether he raised the price of provisions a copper, from our stand-point.

Mr. CARPENTER. Mr. President and Senators, if this case is dwindling down to a mere question of ethics between Mr. Marsh and Mr. Evans, we will retire. But the theory of the honorable managers has been that in consequence of the arrangement between Marsh and Evans the soldiers were plundered. Now, if it be a fact that no one was injured by this arrangement, I do not think that this impeachment trial need be prolonged. I understand that impeachment is to punish some wrong. If no wrong has been committed which would lay the foundation for even a civil action, if the Government has not lost a shilling, and the soldiers, who are the wards of the Government, have not lost a shilling, it is difficult to see what this impeachment is for.

We offer to prove by this witness that the only consequence of a post-trader residing away from his post would be that he could not be controlled by the council of administration or subjected to the influences of the officers in command. The object of this order was to bring the trader under the supervision and influence of the officers at the post. If the question which I put to the witness had been objected to on the ground that the answer was self-evident, the objection would have some force. But here we have upon the stand a soldier of no mean reputation, one who has served from his boyhood to the present hour and filled every station from a cadet to a major-general and performed his duties under every variety and contingency of the public service, and we now offer to put these questions to him and appeal to his experience on the subject in order to show by him that it was immaterial where the trader lived if he sold his goods cheap enough. The object of bringing the trader within the post was to subject him to the influence of its officers, and thus to control his prices within the bounds of reason. No other object could be attained. If the soldier did not have to pay for the bonus which the trader paid to his friend, it made no difference to the soldier whether the bonus was paid or not. It is for that reason we claim this to be competent evidence.

Mr. BLAIR. Mr. President and Senators, the court will have observed that the scope of the case on the part of the prosecution here is to assume a knowledge on the part of this defendant of the contract existing between Evans, the trader, and Marsh, a witness. There is no ground for that assumption here. There is no ground to assume, certainly at this stage of the case, any knowledge on the part of the defendant of the existence of such a contract. The proposition that we now have before the court is to show that when these complaints were brought to the attention of this defendant, he called upon General McDowell, an experienced officer then present in Washington, to call his attention to them and to draw such an order as would meet the difficulty complained of in the newspapers and before the committee of Congress. General McDowell drew that order, and he says in his testimony that he submitted it to the chairman of the Military Committee of the House, and that the chairman before whom this complaint had been made deemed that order all sufficient. Now, how do the gentlemen on the other side attempt to escape from the weight and force of that testimony? It is clear that the order was, in the opinion of the General, all sufficient; that he drew it with reference to the fact as he supposed that the trader in this case did not reside at the post at all but resided in Washington or in New York. The question that we ask the witness is, Did that make any difference? We want the General to say whether it made any difference in view of the effectiveness of this order where the man resided, and did it not have that effect. The manager says "that is an improper question because we are impeaching your client here for having done something." That is not the question in examining this witness at all. He says "We are impeaching your client for being a party to a corrupt bargain." The very impression and very force of this testimony is to show that if there was any such bargain our friend and our defendant was not a party to it at all, for he was doing everything that a just and good officer could do to crush out such a corrupt bargain and make it utterly ineffective.

Mr. Manager LAPHAM. Mr. President, I apprehend, Senators, that the learned counsel has endeavored to withdraw the attention of the Senate entirely from the real question now before it for consideration and to discuss matters which rest mainly in his imagination rather than in the facts of the case as thus far developed. The witness says he drew this order under the conviction resting upon his mind that the post-trader was Marsh, residing in the city of New York, and that the sole object of the order was to correct that mischief. As a military officer he assumed that it was mischievous to have a post-trader not residing at the place where he was trading. The learned counsel says that the defendant called upon General McDowell to draw this order and to correct this evil. That is an entire misapprehension. General McDowell called upon the defendant to admonish him that there was wrong imputed to him in appointing a post-trader not residing at the place where he was engaged in business. Did the defendant correct that misapprehension? Did he say to General McDowell, as he well knew, "Marsh is not the post-trader: Evans is the post-trader; the gentleman who is engaged at Fort Sill in this business is the officer; Marsh is not the officer." If he had said that, General McDowell would never have drawn any order at all; but the defendant left General McDowell in ignorance of the real facts in this case. He concealed from him the fact that instead of Marsh being the trader, Evans was the trader appointed by him, his appointee.

Therefore the argument of the learned counsel that here was a desire on the part of the defendant to correct an evil falls entirely to the ground. He knew there was no evil so far as the appointment was concerned. He knew perfectly well that his appointee resided at the place where he was transacting this business, but he concealed from General McDowell the relation of Marsh to this transaction, with which we say he was perfectly cognizant, that Marsh was receiving this bonus of $12,000 a year; so that the argument of the learned counsel falls entirely to the ground.

This question to which we object, I submit to Senators, is entirely

foreign to any inquiry before the Senate. It is obnoxious again to the objection that it is asking for a mere opinion or inference of this witness, and not for any fact, not for his opinion or inference upon any question upon which he might be called to testify as a military expert. For that reason we submit the question should not be allowed to be put.

Mr. CARPENTER. Will the manager permit a moment's interruption?

Mr. Manager LAPHAM. Certainly.

Mr. CARPENTER. We shall show, or expect to show, in connection with this testimony, that General McDowell had seen the article which had been published in the Tribune, and in consequence of that called upon the Secretary of War, and that that very article says that Evans is the trader at the post and pays tribute to Marsh in New York.

Mr. Manager LAPHAM. Then why did General McDowell draw this order to provide against a post-trader not residing at the post?

Mr. CARPENTER. That is just what I want to get out of the General.

Mr. Manager LAPHAM. This question is not calculated to call for that information.

Mr. CARPENTER. It leads to it pretty rapidly.

Mr. Manager LAPHAM. Now, then, as to whether a public officer, receiving a share of the contribution in the manner in which Evans was making his contributions to Marsh, thereby imposes upon those who are compelled to trade at a military outpost (Fort Sill, for instance, to bring the question directly home) an additional burden or not, is not a consideration here.

Mr. CARPENTER. I thought that was the only question.

Mr. Manager LAPHAM. Not at all. If he consented to receive a portion of what was thus contributed he has nothing to do with the consequences which resulted from the act. The acceptance of the share is what constitutes his offense. Whether he harmed or did not harm others is not a question for him to consider or for the Senate to consider. That it did result in harm there, that it did lead to grievous complaint there, that it did lead to the Tribune article, that it did lead to the complaint and testimony of General Hazen, are facts which are patent to us all; but whether it had resulted in that or not is not a question for this defendant. It is enough for us to show that he consented to accept a portion of the money which was contributed by Evans to Marsh. If we establish that fact we establish his guilt within the range of the constitutional power of impeachment on the part of the House and within the jurisdiction and power of this court to try him for an impeachable offense.

Mr. BLAIR. Mr. President and Senators, I beg to call the attention of the court to the fact that the gentleman in the close of his speech, and his colleague in the opening of his, assumed here as proved and established before this court the very thing that they have yet to prove, of which there is not a scintilla of proof before the court. He says of course if they prove that this defendant received this money it is an impeachable offense, and it does not make any difference what this order was drawn for. He goes back constantly harping on that and repeating it as the substance of the thing proved, when it remains yet to be proved, and when the question before this court bears directly upon that question, to show that by the course of conduct adopted by this defendant he could not have known that there was any such contract in existence between these parties.

The effort which we are here now making and the effect of this proof is as positive as it can be made to negative the assumption upon which these gentlemen are asking these questions. Is it not legitimate for us to ask this witness—an experienced officer of the Army, who himself did call upon the Secretary to inform him of this evil in existence and to suggest remedies for it—whether or not the remedy which he himself suggested was not adequate to the evil which he undertook to meet? The question whether the trader lived at the post or anywhere else is, as we expect to show, utterly immaterial; and yet we see that that circumstance was made to figure in the opening of this argument, and is continued to this moment, as the only way of escape from the conclusion and weight of this testimony that the defendant misrepresented to the officer who drew this order the fact that the trader resided not at the post but in New York.

The witness has not said any such thing; he has not said at all that this defendant represented to him any such thing. He has not said that, to begin with. Those are words put into his mouth by these gentlemen. He has not asserted at any time that the defendant told him that the trader lived in New York and that this was carried on for that purpose. He says, to be sure, that as he now recollects it, he understood the fact to be that he did reside somewhere else; but we will show him and show this court before we get through that in that his recollection is mistaken. We will show him that he knew then, at the time, that the trader did not live in New York, but lived at the post. Hence this totally immaterial circumstance in its bearing upon this order is utterly swept out of the way, and the testimony will be left to bear with its whole force upon the fact that this defendant did not know and could not know of the existence of this contract which is the basis of the proceedings.

I therefore insist that this is a principal, material question to be answered by the witness, and the fact of the resistance to it makes it manifest to the court that it is a pretty material question.

Mr. MORTON. I offer the following order.

The PRESIDENT *pro tempore*. The proposed order will be reported.

The Chief Clerk read as follows:

Ordered, That on questions of the admissibility of testimony the discussion shall be limited to one counsel for the respondent and to one manager for the House of Representatives, and shall not extend beyond ten minutes on each side.

Mr. KERNAN. I move as an amendment that the objecting party have the close, so that we may apply the ordinary rule.

Mr. CARPENTER. Five minutes for opening and five minutes for closing?

Mr. MORTON. I do not say anything about five minutes. I want to notify counsel on both sides that hereafter, for one, I shall insist that the discussion shall be confined to such time as the court gives, and the objecting party may have the opening and close; so that we shall not have it repeated over and over again.

Mr. CARPENTER. Before the question is taken on this proposed order I desire to show to the Senate that if it is desired to have this testimony put in upon the principles which govern the admissibility of testimony in courts of justice, it is impossible for us to discuss the questions which will constantly arise in ten minutes. If the Senate choose to make an order that no objection shall be argued at all and that it shall be submitted to the court without an argument, let it be so; but in a case of this kind, in the highest court of the land, to say that the propositions of the admissibility of testimony, which are after all the great questions in all criminal trials, shall be disposed of in this way I submit to the court, most respectfully, is to deny us a right which was never denied in any court of the United States. No such rule exists anywhere.

Mr. THURMAN. Will the counsel allow me to interrupt him? I move to amend the order by striking out "ten" and inserting "thirty," and adding at the end "unless otherwise ordered;" so that in case it is necessary the time may be extended.

Mr. BLAIR. I beg the indulgence of the Senate——

Mr. MORTON. I withdraw the order.

The PRESIDENT *pro tempore*. The Chair will again remind gentlemen, and hopes he does it for the last time, that the counsel as well as the managers should address the presiding officer, that he may maintain the rights of the parties. It is due to the Senate that it should be done; and the duty of the Chair demands it to protect the respect due to the Senate. The Chair will state also that he will not recognize a gentleman on either side unless he does rise and address the presiding officer.

Mr. MORTON. With the consent of the Senate, I withdraw the order.

Mr. Manager McMAHON. The order having been withdrawn, we object to any further argument on this proposition, and demand that the question be submitted.

Mr. CARPENTER. I want to say one word, Mr. President. It seems the Chair will not permit us to address the Senate, and the Senate will not permit us to address the Chair. Precisely how we are to perform our duty, and precisely what angle we are to direct our discourse to, I cannot understand.

The PRESIDENT *pro tempore*. The Chair will relieve counsel on that point. All the Chair desires is that counsel shall rise and call the attention of the Chair and then turn to the Senate.

Mr. CARPENTER. That I have invariably done, I think.

The PRESIDENT *pro tempore*. The Chair cannot control the rights of the parties, as well as of the Senate, without knowing whether the person on the floor is the one he has recognized as entitled to the floor. Objection is raised to the question Shall the interrogatory be put?

Mr. CARPENTER. Before the question is put I wish the interrogatory reported.

The question was read, as follows:

"Q. Is there any way that that could injure the soldier or the country, unless he charged higher prices in consequence of that arrangement?"

Mr. CARPENTER. The word "that" means whether the arrangement between Marsh and Evans could have injured the soldier, unless in consequence of that the trader put up the prices.

The PRESIDENT *pro tempore*. Shall this interrogatory be admitted?

Mr. HOWE. I ask for the yeas and nays on that question.

The yeas and nays were ordered.

Mr. McMILLAN. Mr. President——

The PRESIDENT *pro tempore*. The Chair will remind Senators that debate is not in order.

Mr. McMILLAN. Before the question is put, I desire to make an inquiry of the managers. Is it not charged in article 3 of the articles of impeachment that Evans was retained in office by the Secretary of War not only corruptly, but that his retention there was "to the great injury and damage of the officers and soldiers of the Army of the United States stationed at said post, as well as of emigrants, freighters, and other citizens of the United States," &c.; and whether, although that issue may not be the only issue in the case, it is not an issue that may be a material one, and upon which the Senate will have to pass in their finding?

Mr. EDMUNDS. That had better be reduced to writing, I should think, under the rule.

The PRESIDENT *pro tempore*. The Chair stated that debate was

not in order, but no objection was raised to the Senator from Minnesota proceeding.

Mr. McMILLAN. It is a mere inquiry.

Mr. EDMUNDS. That is debate.

The PRESIDENT *pro tempore*. The question is, Shall this interrogatory be put? upon which the yeas and nays have been called.

The yeas and nays being taken, resulted—yeas 20, nays 31; as follows:

YEAS—Messrs. Allison, Boutwell, Bruce, Cameron of Wisconsin, Conkling, Conover, Cragin, Ferry, Frelinghuysen, Harvey, Howe, Jones of Nevada, Logan, McMillan, Mitchell, Oglesby, Paddock, Patterson, Sargent, and West—20.

NAYS—Messrs. Bayard, Bogy, Booth, Caperton, Cockrell, Cooper, Dawes, Dennis, Edmunds, Gordon, Hamilton, Ingalls, Kelly, Kernan, Key, McCreery, McDonald, Maxey, Merrimon, Morrill of Vermont, Norwood, Randolph, Ransom, Robertson, Saulsbury, Sherman, Thurman, Wadleigh, Whyte, Withers, and Wright—31.

NOT VOTING—Messrs. Alcorn, Anthony, Barnum, Burnside, Cameron of Pennsylvania, Christiancy, Clayton, Davis, Dorsey, Eaton, Goldthwaite, Hamlin, Hitchcock, Johnston, Jones of Florida, Morrill of Maine, Morton, Sharon, Spencer, Stevenson, Wallace, and Windom—22.

The PRESIDENT *pro tempore*. The Senate sustains the objection.

Q. (By Mr. CARPENTER.) General McDowell, please look at that article which was read yesterday from the files of the New York Tribune and see if that is the article which induced you to call upon General Belknap in regard to this subject?

A. [Examining]. It may have been, but I am not certain what the article was, or rather what the articles were. Some articles appeared in the Tribune about that, and it may have been such an article.

Mr. CARPENTER. I ask the managers if they claim that there was any other article on that subject in the Tribune about this time except this?

Mr. Manager McMAHON. I do not know. Mr. LYNDE says there was another.

Mr. Manager LYNDE. In March.

Mr. CARPENTER. Was not that after the order had been issued?

Mr. Manager McMAHON. No; it was when General Hazen gave his testimony.

Mr. CARPENTER. Some years before?

Mr. Manager McMAHON. No, the following March. That article appeared in February, and this was the following March.

Q. (By Mr. CARPENTER.) State, General, as near as you can, at what time the article which you saw in the Tribune appeared.

A. I could only recall that date by the date of the order, which was March 25, 1872. I came to Washington a few days before the date of that order, I think March 23. I saw Mr. Whitelaw Reid, I think, the day before I came to Washington. It was a short time before that; whether one day or a week I do not know.

Q. The article which you saw you had seen before you came to Washington?

A. I saw it before I came to Washington. It was called to my attention. I stated yesterday my remark to Mr. Reid and his statement to me that the article was true and that there was more yet; and that made me feel that it was a grave question. I think I came on purpose to Washington to see the Secretary about it.

Q. Look at that letter and see if it refreshes your recollection as to what article you referred to there. [Handing the witness a letter.]

Mr. Manager McMAHON. Let us see the letter before testimony is given about it.

Mr. CARPENTER. Not now. I simply hand it to him to see if it refreshes his recollection in regard to the question.

Mr. Manager McMAHON. You do not claim that I have no right to see it?

Mr. CARPENTER. I do most certainly. When I want to refresh your recollection I will hand it to you.

Mr. Manager McMAHON. There is somebody else's recollection to be refreshed besides mine.

The WITNESS. This is a private note of mine to the Secretary.

Q. (By Mr. CARPENTER.) Does that remind you in any way in regard to the article which you saw?

A. No; this is marked——

Q. Do not read the letter. I simply hand it to you to see if it refreshes your recollection.

A. This refers, I think, to a subsequent article.

Mr. Manager McMAHON. Mr. President, that letter has been put in the hands of the witness, and we claim the right to see it. The witness has no right, as I understand the law, to refresh his recollection from a memorandum which cannot be shown to the other side.

Mr. CARPENTER. This happens to be a memorandum that could be shown to the other side with perfect innocence and without injury; but we do not propose to show it to them just at this minute.

Mr. Manager McMAHON. We will not take your word for that.

Mr. CARPENTER. We do not ask you to.

Mr. Manager McMAHON. We want the judgment of the Senate, Mr. President, on the question.

The PRESIDENT *pro tempore*. The Chair will submit the question. The manager asks the Senate to decide the question: Shall this paper go into the hands of the managers?

Mr. CARPENTER. The hands or the pocket?

The PRESIDENT *pro tempore*. The managers hold that they have a right to the letter that was submitted to the witness to refresh his memory. The question is, Shall the managers have a right to the letter?

Mr. KERNAN. I think that the witness said it did not refresh his memory as to the matter, did he not?

Mr. CARPENTER. That is what he said.

The PRESIDENT *pro tempore*. Shall the letter go into the hands of the managers?

The question was decided in the negative.

Q. (By Mr. CARPENTER.) I want to ask you, General, what had been the practice in regard to sutlers residing at their posts prior to the war?

A. So far as my memory goes, they had resided at the posts.

Q. Had you ever known instances in which they did not reside at the post?

A. I know of an instance in which one of the members of a firm did not reside at the post, but I do not know it of my own knowledge.

Q. It is charged in the third article of impeachment that the things alleged to have bean done there—that is, the making of this agreement between Evans and Marsh—had been to the great injury and damage of the officers and soldiers of the Army of the United States stationed at that post. In what way could such contract injure the officers of the United States?

Mr. Manager McMAHON. Mr. President, we object to that question as being determined by the decision already made upon the yeas and nays.

The PRESIDENT *pro tempore*. The Chair sustains the objection.

Mr. CARPENTER. Does your honor decide that this question has been put before and voted down?

The PRESIDENT *pro tempore*. A similar question.

Mr. CARPENTER. I have no appeal anywhere, I suppose.

The PRESIDENT *pro tempore*. You have not. A Senator can have the point submitted to the Senate.

Mr. CARPENTER. Sufferance is the badge of all our tribe, evidently. Mr. President, I want to say a few words more on this subject to this court. It seems to me so important in this case that I do believe that if understood by the lawyers of the Senate this testimony would not be excluded.

Mr. Manager McMAHON. Mr. President, I know of no point before the court at the present time.

Mr. CARPENTER. Will not some Senator move to reconsider that vote?

Mr. KERNAN. Allow me to put a question to the counsel: Suppose a public officer whose duty it is to appoint a person to office should, for a consideration paid him, appoint a very good man rather than a bad man, would it not be a crime for him to do so? That is why I acquiesced in the decision of the Chair confirming the previous decision. I do not think we should hear it discussed, unless some gentleman has doubt about it. Otherwise we shall never get through.

Mr. CARPENTER. Then I shall have to experiment on other questions. I abandon this with this offer, Mr. President, which I desire to go upon the record: that the defendant here and now offers to prove that as matter of fact no injury could result to any soldier or any officer of the Army, or to anybody else, from the contract made between Marsh and Evans as alleged, except it induced Evans to put up the prices of the articles which he sold; and to prove that Mr. Evans did not put up those prices one cent in consequence of the arrangement made with Marsh. That, I think, puts the point upon the record. And further, let it be stated that we offer this to meet that allegation of the third article of impeachment which charges that this thing did result to the great damage of the officers and soldiers of the Army of the United States.

Mr. SHERMAN. I ask the counsel to read the question he proposes to put to the witness.

Mr. CARPENTER. The reporter will read it.

The question was read by the Official Reporter, from his notes, as follows:

Q. It is charged in the third article of impeachment that the things alleged to have been done there—that is, the making of this contract between Evans and Marsh—had been to the great injury and damage of the officers and soldiers of the Army of the United States stationed at that post. In what way could such contract injure the officers and soldiers of the United States?

Mr. CARPENTER. I would be very thankful to some Senator to do what I cannot do—move to reconsider the vote of exclusion.

Mr. MERRIMON. Mr. President, in order to give the counsel an opportunity to make his question, I ask for a vote of the Senate on the ruling of the Chair.

The PRESIDENT *pro tempore*. The Senator from North Carolina asks that the question be submitted to the Senate, Shall this interrogatory be admitted?

Mr. MERRIMON. I take it now the counsel can make his argument.

Mr. CARPENTER. Mr. President and Senators——

Mr. Manager McMAHON. Before proceeding, the understanding is that you open and we close the argument. Being the objectors we have the right to the opening. We waive that.

Mr. CARPENTER. Go ahead; take every right you have got.

Mr. Manager McMAHON. We simply waive it.

Mr. CARPENTER. No, you need not waive it. I insist upon your opening.

Mr. Manager McMAHON. All right. I will simply state the grounds of objection to the Senate in order to preserve order and decorum in the proceedings.

We have yet offered no proof in this case to show that this has been detrimental to the service of the United States in the view in which the ethics of the gentleman seem to indicate to him may be important. It is a matter really for him in the defense if there is anything in it; and he has no right when we put a witness upon the stand to go into his substantive defense on that point.

The second objection we have in this case is the one which the Senate has already decided. Suppose that we should, taking an indictment, find in that indictment that the offense charged was alleged to be against the peace and dignity of the State of Ohio, or the State of New York, or against the commonwealth; and you were to put a witness on the stand and attempt to prove that it was not against the peace and dignity of the State of Ohio or the State of New York because it was done in a corner where the State did not see it or had nothing to do with it, and would not know it unless one of the parties told it. It seems to me that it is entirely irrelevant, and it certainly strikes me as a new argument in morals that it is not improper, not an impeachable offense, for a Secretary of War or a Secretary of the Navy to dole out his offices to the men that will make the best bargain with him, without reference to the question whether it may be injurious to the public service or not.

Mr. Manager HOAR. Mr. President, I desire to state in further opening the further objection that this is not a matter to be proved by experts; that the question whether the payment of the sum of $12,000 a year for an office or the right to sell goods is to be an injury to the persons to whom those goods are sold, cannot be a question to be answered by a witness upon the stand as to how or in what way that injury would be wrought. It is a question for the common knowledge and understanding of men, and which the court or jury must deal with on their own judgment. It is not a matter to be proved, to examine witnesses upon.

Mr. CARPENTER. Mr. President and Senators, there is, as every lawyer knows, a conflict in the decisions in England and in some of the States of this country in regard to the extent to which a cross-examination may go. The rule in England, I understand to be, and in many of the States, that when a witness is called upon the stand, the other party may cross-examine him as to anything pertinent to the issue. The rule in other States is the reverse, and the rule I am bound to say in the Supreme Court of the United States is that you can only cross-examine as to matters referred to by the direct examination. But I submit to the Senate that in this trial, circumstanced as we are, with many Army officers in attendance here whose public duties, as important as the duties of any officer, require their immediate return, and who are staying here every day to the prejudice of the public service, that rule, which after all is one in the discretion of the court, should in this case be, as I understand the English rule to be, that we may ask any witness called to the stand any question pertinent to the issue. There are many advantages in this. In the first place, it will place before the Senate in a compact form most of the testimony upon a particular subject.

In the next place, it will be a great convenience to all these witnesses. I do not understand, however, that I am now going at all beyond the scope of the direct examination. I make this remark because the question will undoubtedly arise hereafter as to other witnesses.

Now the managers say they have not as yet introduced any proof to show that this arrangement was detrimental to anybody. If they admit that it was not, then I do not wish to take a moment of your time in proving that it was not. If they concede that not a soldier paid one cent more for any article that was sold at that post in consequence of this arrangement between Marsh and Evans, that is the end of it. That is all I want to show by this testimony; but we are able to show, and shall if permitted, that notwithstanding this arrangement between Evans and Marsh, Evans never increased his prices on a single article. He has as he has sworn elsewhere, upon the general average of his prices, charged less, than before, he did before the arrangement made with Marsh.

Mr. Manager LAPHAM. Will the learned counsel allow me to put him a question?

Mr. CARPENTER. Certainly.

Mr. Manager LAPHAM. Why, then, I should like to have the counsel answer, was the article in the Tribune published or the testimony of General Hazen given?

Mr. CARPENTER. Well now, Senators, I always try to answer questions put to me in a trial by opposite counsel; but a question which supposes that I manage the New York Tribune is such an impeachment of my own intelligence, inasmuch as it is generally abusing me, that I must ask my friend to excuse me from answering that question. What crotchet entered the head of Whitelaw Reid that morning, I cannot tell. Where he dined the night before; what influences were brought to bear on him between dinner and breakfast; whether he had a good breakfast and felt well, or a poor one and felt ill, it is impossible for me to say; and I ought to say as a matter of justice to Whitelaw Reid that his relations and mine are not intimate.

Mr. Manager LAPHAM. My inquiry extended to the complaint of General Hazen.

Mr. CARPENTER. I understood you to ask why that article was published in the New York Tribune.

Mr. Manager LAPHAM. And the evidence of General Hazen given.

Mr. CARPENTER. That involves a scrutiny of the mind of General Hazen, and I never saw the man. I have not so much clew to his intellect as I have to Whitelaw Reid's. I have felt *him* occasionally. I *never saw* the other man, and know nothing of his mental processes.

This question is not one of ethics. The managers are attempting to lay a foundation by proving facts from which certain conclusions may be drawn. Your honors cannot have forgotten the opening of the learned manager the other day. You will recollect distinctly how we were taxed, and how our crime was swollen and aggravated by the charge that the arrangement between Marsh and Evans was an affliction upon the soldiers. One of the managers who argued the question of jurisdiction—I did not see then, and do not now, how that bore on the question of jurisdiction—went into an estimate of how many cents per day were taken out of the pocket of each soldier. If that was good evidence on the question of jurisdiction, it ought certainly to be admissible under an article which charges that this arrangement was detrimental to the soldier.

They are offering these facts for what purpose? For the purpose of showing that Mr. Belknap, being interested in this tradership, did not do what an honest man would have done to protect the soldiers at that post. I have never before understood that the House of Representatives had undertaken to correct the good morals of the country, or that a mere arrangement between two individuals, which is not even shown to have been known by Belknap, could be a subject of impeachment, unless it injured some one. I do not understand that the Government of the United States is interested in or has any right to inquire whether a particular sum remained in the pocket of Marsh or went to the pocket of Belknap, so long as the exchange involves no dishonesty. If no injury has been done to the Government nor sustained by the soldier, then the theory on which they ask you to presume that this respondent was guilty falls to the ground.

We offer to show, in this connection, that sutlers were never required to live at their posts. We expect to show that that order, drawn by General McDowell, is the first order in the history of this Government which required traders or sutlers to reside at their posts. We also propose to show by him General Belknap's readiness to do anything to correct the reported irregularities at that post; we have shown that General McDowell drew the order at the request of the respondent, which was sufficient to correct all abuses complained of.

We cannot get all our evidence in upon one question. This thing leads by due succession from one matter to another; but to strike out what we offer is to strike out the whole *morale* of the defense, is to blot us out with rhetoric in the articles of impeachment and in the opening of counsel; and yet, on the question of intent to exclude all proof, suppose your honors have, as matter of strict law, a right to do it. Here, when a public officer who has been for years administering one of the most important branches of the public service, who has passed through his hands $337,000,000 without the loss of a cent to the Government, who has served his country in the field, everywhere well, would your honors deny to him even a little generosity in the admission of proof which would go to bear upon the question of his guilty intent? You might impeach him even if he received it by accident, if he took it in a dream, if he received it believing he had a perfect right to receive it. That becomes a question on which you will pass when rendering final judgment; but would you not allow him to prove everything that would go to establish his intent? He might be mistaken, the thing itself might have been improper, yet held up before forty millions of people, would you not permit him to show what he could toward establishing the intention with which he performed the act complained of?

Mr. Manager JENKS. Mr. President, I desire not particularly to argue this question, but simply to state that the charge against this defendant is that he directly or indirectly received a bribe. The defense which this question would indicate—and they say it is the whole *morale* of their defense—is that if he did receive a bribe nobody is harmed by it; the soldiers paid no more in consequence of his having received a bribe than they would have done had he not received it. Now is that relevant testimony? The judge on the bench may take in his hand the filthy lucre from a suitor, and he may say, "I gave the same judgment which I would have given if I had not received that money." The Secretary of War will say, "I issued the same orders I would have issued had I not received this bribe." Crime is crime *per se*, and it is not the effect of that crime that we are to inquire into now, but simply did that man receive the bribe? He may have received it with the benevolent intention of donating it to some eminently charitable institution, and it may not have affected the soldier one cent, but if he took the money merely he is guilty of the crime, and you have no right to inquire into its effects, because the law says it is a crime, and that is what we are now trying.

Mr. CONKLING. Mr. President, I ask to have read by the Secretary, from the RECORD, the few lines which I send up marked on page 116, and also on page 118. It is the testimony to which, if at all, this cross-examination is addressed.

The PRESIDENT *pro tempore*. The Secretary will read.

THE CHIEF CLERK. On page 116:

> I am informed by officers who were stationed at Camp Supply that Lee & Reynolds paid $10,000 outright for the same exclusive privilege there. Other cases are talked of, but not corroborated to me; sufficient to state, the tax here amounts to near $40 per selling day, which must necessarily be paid almost entirely by the command, and you can readily see that prices of such goods as we are compelled to buy must be grievously augmented thereby. It not being a revenue for the Government and Mr. Marsh being an entire stranger to every one at the post, it is felt by every one informed of the facts to be, as I said before, a very great wrong.

Mr. CONKLING. That is from the Tribune article which I think has been put in evidence. Now I ask to have read a short passage marked from General McDowell's testimony on page 118.

The Chief Clerk read as follows:

I told him that it seemed to me, as he had a monopoly in his hands, it would be simply the proper discharge of his duties in regulating that monopoly to see that it was not abused. He concurred with me, and if you will look at the order—I have it not now, and I do not recollect the date of it, but I think some time in March, 1872—you will see that it corrected the very evils complained of; that is to say, it put these post-traders, so far as the charges they were to make on their sales were concerned, subject to the council of administration of the post, the council of administration consisting of the three highest officers at the post under the commanding officer; that the council of administration was to take into account the original cost, freight, and the fact that the post-trader, unlike the settler, whom he is generally supposed to have succeeded, had no lien on the soldier's pay.

Mr. HOWE. Now, Mr. President, I ask to have read the question and the answer to the question, which is found at the bottom of the first column on the one hundred and tenth page, the question put by counsel for respondent to the managers, and the reply of the managers.

The Chief Clerk read as follows:

Mr. CARPENTER. Mr. President, before the manager takes his seat I should like to inquire of him, if he will inform us, whether the managers claim that the facts charged in the articles of impeachment violate any and what statute of the United States. In other words, will they inform us what particular "high crime" this is?

Mr. Manager LYNDE. I will answer the gentleman that while we do not deem it important or necessary, in order to sustain the impeachment, that it should be based upon any statute or act of Congress, we do rely and refer to section 1781 of the Revised Statutes, and also to section 5501.

Mr. Manager McMAHON. I ask unanimous consent to make a statement in regard to this Tribune article.

The PRESIDENT *pro tempore*. The Chair hears no objection.

Mr. Manager McMAHON. Mr. President, the managers did not suppose that the article in the New York Tribune when read was read as evidence of any fact contained in it, and did not so offer it. They simply offered it as a statement which came to the knowledge of General Belknap, for the purpose of discovering and proving to this court what action he subsequently took thereon.

Mr. CONKLING. May I inquire of the manager, did he not understand that General McDowell, in referring to what he had heard and restated to the Secretary of War, had reference to that article and to the *gravamen* of it, namely the charge in the article that grievous impositions had occurred by augmenting the prices charged in the language of the articles, of the officers, soldiers, emigrants, and other citizens of the United States?

Mr. Manager McMAHON. Undoubtedly; but the statement by General McDowell to the Secretary was of no fact that he knew. It did not put anything in testimony that had fallen under his observation or that he could swear to, and is evidence of no fact. All that we undertook to do in the examination of General McDowell was to connect the testimony of General Hazen before the Military Committee with General Belknap, not to prove any fact that was stated in the testimony of General Hazen. I think there is scarcely a lawyer seated here on the part of the House so poor as to have offered it as evidence of any fact contained therein.

Mr. CONKLING. But to charge the respondent with notice of it.

Mr. Manager McMAHON. With notice of the fact; and if we fail to prove by other testimony any fact stated therein which was important, that fact is not proved at all to this court; and, therefore, nothing has been offered by the managers at this time in the least degree bearing upon the proposition as to whether this thing did do harm to the soldiers or did not.

Mr. CARPENTER. Mr. President, one moment. It will be recollected that one of the managers, I think this morning, has accused General Belknap of misrepresenting to General McDowell the fact as to the location of the trader. It is said that General McDowell understood when he went to Belknap that the trader lived in New York and that Mr. Belknap did not undeceive him. Now that very article shows and states the fact to be that Evans, the trader at Fort Sill, had made a contract with Marsh in New York.

Mr. Manager McMAHON. That is not the question we are now discussing.

Mr. CARPENTER. It is an important question.

Mr. Manager McMAHON. It has nothing to do with this question.

The PRESIDENT *pro tempore*. The reporter will report the interrogatory which is to be submitted to the Senate.

The Official Reporter read the following interrogatory from his short-hand notes:

Q. It is charged in the third article of impeachment that the things alleged to have been done there—that is, the making of this contract between Evans and Marsh—had been to the great injury and damage of the officers and soldiers of the Army of the United States stationed at that post. In what way could such contract injure the officers and soldiers of the United States?

Mr. HOWE. Is the question to be submitted to the Senate of putting that interrogatory, or is it the question of the admissibility of the proof offered by the counsel for the respondent?

The PRESIDENT *pro tempore*. The admission of this interrogatory.

Mr. CARPENTER. But that, I submit, should be stated to the Senate and voted upon in connection with the offer we make of testimony to follow it up.

Mr. EDMUNDS. The only thing we can vote upon now is that interrogatory.

The PRESIDENT *pro tempore*. The question is, Shall the interrogatory just read be admitted?

The question was decided in the negative.

The PRESIDENT *pro tempore*. The objection is sustained. Proceed with the witness.

Q. (By Mr. CARPENTER.) General McDowell, do you know of any order or regulation of the War Department prior to this one drawn by you for General Belknap, requiring sutlers or post-traders to reside at their posts?

A. I do not.

Q. As you understand it, that is the first regulation on that subject ever promulgated?

A. I do not know of any other, and, of course, that is the first to my knowledge.

Q. Let me ask you one other question in regard to a subject I inquired about before, and that is in regard to sutlers prior to the war. Had it not been common for the sutler himself to be the man of capital in the concern and have it carried on by his clerks or partners at the post?

A. I cannot speak from any general knowledge on the subject. At the post at which I was stationed the sutler resided there and had all the capital necessary for it himself.

Q. I ask you merely for the purpose of having it identified and marked by the Secretary, whether that letter is in your handwriting? [Handing a letter.] It is the same letter I showed you before.

A. That is a private letter of mine to Secretary Belknap.

Q. Did it inclose this letter to General Belknap? [Handing another letter.]

A. From the dates I suppose it to be such, though it had escaped my memory.

Q. Is that the handwriting of Whitelaw Reid?

A. It is.

Q. Do you know his handwriting?

A. I do.

Mr. CARPENTER. I now ask to have these papers marked by the Secretary for mere identification. I propose to keep them in my own possession.

The letters were marked as follows, respectively:

K 1.

Mr. Carpenter placed this paper in my hands for the purpose of identification.
W. J. McDONALD,
Ch. Cl.

K 2.

Mr. Carpenter placed this paper in my hands for the purpose of identification.
W. J. McDONALD,
Ch. Cl.

Mr. Manager McMAHON. Now, Mr. President, we claim the right to see these letters at this time.

Mr. CARPENTER. We deny it.

Mr. Manager McMAHON. If that right is not granted we shall reserve the right to object to their introduction at any future stage of the case.

Mr. CARPENTER. I do not propose to have them offered in evidence at this time; but I am very happy to gratify your private curiosity, [handing the letters to the managers.]

[The letters examined by managers and returned to Mr. Carpenter.]

Q. (By Mr. CARPENTER.) I ask you, General, whether on reflection and after looking at that article you think you were or were not mistaken in saying that you supposed that Marsh was the post-trader at the time you had your interview with the Secretary of War?

A. I can hardly say what particular relations Marsh or Evans had with this matter. The Secretary told me he had appointed Marsh, and I supposed he had received the office. Whether he had transferred it, or assigned it, or sublet it, or farmed it out, or what relations he had with it was not, in my mind, a very special question. What I wanted to do was to correct an abuse; but whether the form was that Marsh was the trader or the other man was the trader was not so much in my mind as to discuss the question that was then up.

Q. Was it of any importance whether Marsh was the trader and Evans his agent, or the reverse?

Mr. Manager McMAHON. O, you do not insist on that question.

Mr. CARPENTER. If not I should not have asked it. (To the witness.) What I mean is, would it have made any difference with the order which you were to draw if you had known the fact to be exactly the reverse? Would not this order as you drew it have covered the abuse in the one case just as well as the other? That is the question.

Mr. Manager McMAHON. We withdraw the objection.

The WITNESS, (to Mr. Carpenter.) I do not understand you.

Q. (By Mr. CARPENTER.) The question is this: Suppose you had known that Evans was the trader and lived at Fort Sill, and that Marsh was not the trader, would you have drawn this order in any different terms than you did employ?

Mr. Manager HOAR. Do you mean to suppose in your question that Marsh received any sum of money from Evans?

Mr. CARPENTER. If that occurs to me I will put it in my question. It had not occurred yet as part of my question.

The WITNESS. If the case was otherwise, it would have been different, of course.

Q. (By Mr. CARPENTER.) How different would it have been? Suppose you had thought at the time that Mr. Marsh was the trader and lived in New York, what order would you have drawn different from this?

A. That is what I suppposed was the case, that Mr. Marsh was the trader living in New York substantially, whether in form or not; and he had the control of the place as evidenced by the fact of his receiving this large tribute.

Q. As you supposed?

A. As was true, and seemed to be understood.

Q. Suppose the case had been exactly the reverse, and you supposed that Mr. Evans had control of it and was the trader, and not Marsh; would your order have been drawn any differently?

A. I do not know. If the man was residing at the post, I do not think it would have suggested itself to my mind to say he should go there.

Q. That is one thing. Now let me call your attention to the first part of this order, to see if that is not the material part of it after all. Please read the first clause of the order.

A. It is—

I. The council of administration at a post where there is a post-trader will from time to time examine the post-trader's goods and invoices or bills of sale; and will, subject to the approval of the post-commander, establish the rates and prices (which should be fair and reasonable) at which the goods shall be sold. A copy of the list thus established will be kept posted in the trader's store. Should the post-trader feel himself aggrieved by the action of the council of administration, he may appeal therefrom through the post-commander to the War Deparment.

Q. Now I want to know why that order would not have corrected the abuse there without regard to whether the trader lived at the post or not, if the order had been executed by that council?

A. Very likely it might have done so.

Q. Would it not have done so?

A. I do not know.

Q. Can you conceive how it could fail to do it?

A. Yes; because it has failed.

Q. Has not that been because the officers have not done their duty?

A. It may be.

Q. Can it be for any other reason? Under this order if the officers had put the articles at the proper prices and insisted upon the execution of the order, would there have been any abuse?

A. I have said before that, in my judgment, there would not have been; but why it was not done I do not know.

Q. Who were the officers at that post?

A. I do not know. I do not know anything about Fort Sill.

Q. And do not want to?

A. I will not say that.

Q. How long have you known General Belknap?

A. I first saw General Belknap at a meeting of the society of the western armies at Chicago. I cannot recollect the date, but it was the first meeting of the Army societies at Chicago.

Q. Was he then Secretary of War?

A. He was not Secretary of War. It was before he was made Secretary of War.

Q. You have known him from that time to this?

A. Yes, sir.

Q. How frequently have you seen him, and how much have you known of him officially and otherwise?

A. I knew him shortly after he was made Secretary of War. He has been an inmate of my house, visiting me. I saw him several times in Washington, several times in New York, and at other places. In the early part of his administration of the War Department I corresponded quite frequently with him unofficially and confidentially, as well as officially.

Q. What has been his character as Secretary of War?

Mr. Manager McMAHON. One moment. Mr. President, we object to this question, and will state our objection to the Senate. I think this is clearly substantive matter of defense, and must come into the trial of this case when the defendant opens his side of the case; but I will say to the gentleman here, though it may not waive the proof upon his part, that the managers upon their part, as I understand, are perfectly willing to concede that up to the time of the development of these matters his character was as good as could be desired or wished.

Mr. CARPENTER. This question, Mr. President and Senators, falls within the class of questions to which I before referred. Of course it is not a cross-examination, but if not answered now, it may make it necessary to keep General McDowell here for several days before it can be put in. I therefore offer it now and let the Senate rule upon it, and then of course we shall know exactly what course to take in regard to other evidence from other witnesses.

The PRESIDENT *pro tempore*. The Chair will submit the question to the Senate. The reporter will repeat the question.

The question was read, as follows:

"Q. What has been his [Belknap's] character as Secretary of War?"

The PRESIDENT *pro tempore*. Shall this interrogatory be admitted?

The question being put, it was decided in the affirmative.

Q. (By Mr. CARPENTER.) Answer the question, General.

A. As far as it came within my knowledge, he was active, energetic, and faithful.

Re-examined by Mr. Manager McMAHON:

Q. Did I understand you to say that General Belknap told you he had appointed Marsh?

A. He told me that he had offered the place to Marsh; I think he said he had offered it or had appointed him, and he told me why, under what circumstances.

Q. What were those circumstances. What circumstances did he tell you?

A. It was something bearing on the relations between Mr. Marsh and his wife.

Q. Friendly relations between them?

A. Relations of kindness while she was sick.

Q. Do you remember the time that she was sick?

A. I do not.

Q. In this interview between you and General Belknap, did he make any allusion, or did you, to the fact that Evans was paying Marsh $12,000, as stated in that Tribune article?

A. I made it in the beginning of my conversation with him.

Q. What did the General say in answer?

A. I cannot recollect that he said anything in answer to that, further than to ask me to draw up such an order as would correct the abuse which I had stated to him—that complained of.

Q. Did he request you then to draw up an order to correct the payment by Evans to Marsh of $12,000 a year?

A. No, sir.

Q. He did not?

A. Except so far as subletting or transferring or assigning or selling the place may be considered to have corrected it.

Q. But it was in that conversation that he told you he had appointed Mr. Marsh?

Mr. CARPENTER. The witness does not say that. I object.

Mr. Manager McMAHON. I put it in the interrogative form.

Mr. CARPENTER. It is an improper form.

Mr. Manager McMAHON. Not at all.

Mr. CARPENTER. I object to that question.

Mr. Manager McMAHON. I will reput it. Was it in that conversation that he alluded to the fact that he had appointed Marsh and not Evans post-trader?

Mr. CARPENTER. That question I objected to for this reason, Mr. President: The witness has said that he cannot say that Belknap said he had appointed Marsh. He said he had offered it to Marsh or had appointed him, or something of that kind. Now to put to him the positive question, "Was it in that conversation that he said he had appointed Marsh," when the witness did not say that he said in any conversation he had appointed Marsh, is not proper.

Mr. Manager McMAHON. I will modify the question.

Mr. CARPENTER. I guess you had better.

Mr. Manager McMAHON. I do so simply to save time. (To the witness.) Was it in that conversation that he said he had appointed Marsh or offered the appointment to Marsh?

The WITNESS. It was on that occasion. I had several conversations; I cannot state whether this was the first time I saw him or subsequently.

Q. (By Mr. Manager McMAHON.) Where was this interview between you and General Belknap?

A. First at his house and subsequently at his office.

Q. At his office in the War Department?

A. In the War Department.

Q. Did either you or he take any steps at the War Department to inquire as to who was the actual post-trader at Fort Sill?

A. We did not.

Q. Did he to your knowledge?

A. I do not know.

Q. Did he go out to make any inquiry?

A. Not that I know of.

Q. In this matter I want this distinctly understood: Whom did you and General Belknap in your conversation there together understand to be the post-trader at Fort Sill?

A. I do not know what General Belknap understood, and as to myself I did not think much about the matter. I merely wanted to correct an abuse; I merely wanted to state a scandal; and I took what I thought the quickest and best and directest way to do it, and that will be seen in the order which I drew up.

Q. If you had known that the grievance that existed there was the payment by Evans, who was actually post-trader, of $12,000 a year to Marsh, who had no capital invested in the concern—I put the question to you in answer to the hypothetical question put on the other side—would you not have drawn a different order from the one you did draw?

A. I can hardly say what I would have done if things had been different.

Q. Still I put the question to you.

Mr. CARPENTER. I tried to get an answer to that and could not; but I hoped you would.

Mr. Manager McMAHON. We have tried. I should like an answer to this question. (To the witness.) If you had known that the actual state of circumstances at Fort Sill was that Evans was really the post-trader, that Marsh had no capital in it, and that Evans was paying $12,000 a year simply for the privilege of holding it——

A. That was about what I understood to be the case.

Q. (By Mr. Manager McMAHON.) Did you draw that order for the purpose of correcting that?

A. Yes.

Recross-examined by Mr. CARPENTER:

Q. Would not that order have corrected it if it had been executed?

A. I have said two or three times that I thought it would.

Mr. CARPENTER. I want to keep that constantly before the Senate.

The PRESIDENT *pro tempore*. Are the managers through with the witness.

Mr. Manager McMAHON. Yes, sir.

The PRESIDENT *pro tempore*. Are the counsel through?

Mr. CARPENTER. We are through.

The PRESIDENT *pro tempore*. May he be discharged?

Mr. CARPENTER. Certainly.

The PRESIDENT *pro tempore*. The witness is discharged.

Mr. CARPENTER. We also wish to cross-examine Mr. Crosby. If that is seriously resisted on the part of the managers we shall have to wait till another period, I suppose.

Mr. Manager McMAHON. We object now simply on account of the convenience of persons at a distance. He is here all the time.

Mr. CARPENTER. It may be understood, then, that our right to cross-examine Mr. Crosby is retained to us?

Mr. Manager McMAHON. It will have to be considered by the Senate.

Mr. CARPENTER. Will it be objected to by the managers?

Mr. Manager McMAHON. Yes, sir.

Mr. CARPENTER. Then I think it ought to be settled by the Senate at this point.

Mr. Manager McMAHON. We expect to put Mr. Crosby on the stand again, and we will therefore concede the right to recall him.

Mr. CARPENTER. Very well; it is much easier to get along good-naturedly.

Mr. Manager McMAHON. I remembered the fact after I made the objection that we shall have to recall him.

RICHARD KING sworn and examined.

By Mr. Manager McMAHON:

Question. Where do you reside?

Answer. In the city of New York.

Q. What is your present occupation?

A. Assistant cashier of the National Bank of Commerce in New York.

Q. Who is the cashier?

A. Mr. Henry F. Vail.

Q. How long has he been cashier of that bank?

A. I may say over twenty years.

Q. How long have you been assistant cashier?

A. Over twenty years.

Q. Are you acquainted with Caleb P. Marsh?

A. I am.

Q. Has he done business with your bank?

A. He has kept an account there.

Q. For how many years.

A. That I cannot say.

Q. About how many, six or seven years back?

A. Yes; that many.

Q. State whether upon any occasions he has procured a certificate of deposit payable to his own order from your bank?

A. He has.

Q. Have you those certificates with you?

A. I have.

Q. Please produce them?

A. Here they are. [Producing papers.]

Q. How many were there in all?

A. Four.

Q. By whom were these issued?

A. One was issued by Mr. H. F. Vail, the cashier, and three are signed by myself.

Q. Those certificates of deposit have of course been returned to your bank and paid?

A. They have been.

Mr. Manager McMAHON. We now offer them in evidence and ask to have read not only the certificates but the indorsements on the back, taking them in the order of dates.

Mr. CARPENTER. You have no objection to my looking at them?

Mr. Manager McMAHON. None whatever. We think there will be no dispute about the indorsements.

The certificates were handed to the counsel for the respondent, and after examination by them sent to the desk to be read.

The Chief Clerk read as follows:

Int. rev. five-cent stamp.

No. 748. NEW YORK, *Nov.* 10, 1871.

C. P. Marsh has deposited in the National Bank of Commerce in New York, fifteen hundred dollars, payable to his order on surrender of this certificate, properly indorsed.

RICHD. KING,
Asst. Cashier.

P. R. KISSAM, *Teller.*
$1,500.

[Indorsements.]

Pay to the order of W. W. Belknap,
C. P. MARSH.

Pay to the order of C. F. Emery.
WM. W. BELKNAP.
C. F. EMERY.

Pay Gilman, Son & Co., or order, for collection, on account of
PEDDECORD & BURROWS.

For deposit to credit of Gilman, Son & Co.
GILMAN, SON & CO., *Bankers.*

No. 783. NEW YORK, *January* 15, 1872.

C. P. Marsh has deposited in the National Bank of Commerce in New York fifteen hundred dollars, payable to his order on surrender of this certificate, properly indorsed.

$1,500. P. R. KISSAM, *Teller.* H. F. VAIL, *Cashier.*

[Indorsements.]

Pay to the order of W. W. Belknap.
C. P. MARSH.
WM. W. BELKNAP.

Pay Fourth National Bank, N. Y., or order, for account of First National Bank, Washington, D. C.
WM. S. HUNTINGTON,
Cashier.

Fourth National Bank, N. Y.

No. 1038. NEW YORK, *Oct.* 9, 1874.

C. P. Marsh has deposited in the National Bank of Commerce, in New York, seven hundred dollars, payable to his order on surrender of this certificate, properly indorsed.

$700. P. R. KISSAM, *Teller.* RICHD. KING, *Assist. Cashier.*

[Indorsements.]

Pay to the order of W. W. Belknap.
C. P. MARSH.

Pay A. M. Belknap or order.
WM. W. BELKNAP.
ANNA M. BELKNAP.

Pay to the order of J. L. Worth, cas'r.
EDWARD JOHNSTON,
Cashier.

Stamped:
"The National Park Bank of New York. Paid."

No. 1039. NEW YORK, *Oct.* 9th, 1874.

C. P. Marsh has deposited in the National Bank of Commerce, in New York, eight hundred dollars, payable to his order on surrender of this certificate, properly indorsed.

$800. P. R. KISSAM, *Teller.* RICHD. KING, *Assist. Cashier.*

[Indorsements.]

Pay to the order of W. W. Belknap.
C. P. MARSH,
WM. W. BELKNAP,
HORACE S. LELAND & CO.

Pay American Exchange National Bank or order.
J. BROWN,
B.

Stamped:
"Am. Exch. Nat'l Bank, Oct. 19, 1874. Paid."

Q. (By Mr. Manager McMAHON.) Mr. King, when a check is cashed by your bank, which is the first entry that is made of that transaction; what book does it go upon?

A. In what is called a check-book.

Q. Who is Joseph A. Kernan?

A. He is the book-keeper of the ledger in which Mr. Marsh's account was kept.

Q. Is he here to-day?

A. He is.

Mr. Manager McMAHON. That is all for the present.

Mr. CARPENTER. We have no question to put to this witness. We will say to the managers, in regard to these certificates, that there is no question that they went through Mr. Belknap. You need not go through the machinery of tracing them all. They are all right, and we admit their reception.

Mr. Manager McMAHON. I think we have proved that clearly.

JOSEPH A. KERNAN sworn and examined.

By Mr. Manager McMAHON:

Question. Where do you reside?

Answer. In the city of New York.

Q. What is your occupation?

A. Book-keeper in the National Bank of Commerce.

Q. How long have you occupied that position?

A. That particular ledger I have had for about seven or eight years.

Q. Have you had charge of Mr. Marsh's account?

A. I have had.

Mr. Manager McMAHON. I will state to the gentlemen that we have the book here and the witness has also a copy which can be verified from the books. (To the witness.) Have you a copy of Mr. Marsh's account from your books?

A. I have.

Q. Examine whether on the 1st day of November, 1870, a check was paid, drawn by Caleb P. Marsh for $1,500.

A. There was.

Q. Now look whether on the 16th day of January, 1871, a check was paid by the National Bank of Commerce for $1,500, drawn on the bank by Caleb P. Marsh.

A. On the 16th day of January, 1871, such a check was paid.
Q. Now look at the 17th or 18th day of April, 1871.
A. On the 17th day of April, 1871, there was a check for $1,500 paid.
Q. That is Marsh's check?
A. Yes, sir.
Q. Now on the 24th or 25th of July, see whether a similar check was paid.
A. Yes, sir; on the 25th of July, 1871, one for $1,500.
Q. Now look at the date of November 10, 1871, which is the date of one of the certificates presented by Mr. King.
A. On the 10th of November, 1871, there were two checks, amounting to $1,600; that is to say, two checks are charged—that is the way we charge them—two checks amounting to $1,600.
Q. Was one of them for $1,500?
A. I can tell by looking at the check-book.
Q. I do not care for that; but there were two checks that amounted to $1,500?
A. Yes, sir.
Q. They were paid upon that day?
A. They were paid upon that day.
Q. Now look at the 14th or 15th of January, 1872.
A. On the 15th of January, 1872, there was one check for $1,500 paid.
Q. Observe whether either at that point or the previous entry of $1,500 there is any entry on your book "paid in for certificate" or anything like that, indicating that it was a check for a certificate.
A. No, sir; there is nothing in the account to show that.
Q. Now turn to June 13, 1872.
A. On the 13th of June, 1872, there was one check for $1,500 paid.
Q. Turn to the 22d of November, 1872.
A. On the 22d day of November, 1872, a check for $1,500 was paid.
Q. Take June 16, 1873, and see whether a check for $1,500 was presented and paid that day.
A. On the 16th of June, 1873, there is a charge of $1,700; but there is no memorandum here, according to custom, to show whether it was one check or two checks. I could tell it by a reference to the check-book.
Q. We may look at that presently. Now, look and see whether there is one about November 4, 1873, for $1,500.
A. No, sir; there is none.
Q. Now, take the 10th of April, 1874.
A. On the 10th day of April, 1874, there was one check for $1,500 paid.
Q. Now, turn to the 9th of October, 1874, the date of two of these certificates, and see if there is any entry.
A. Yes, sir; on the 9th of October, 1874, there was a check for $1,500.
Q. Take the 24th of May, 1875, and see if a check of $1,500 was paid that day.
A. It was paid that day.
Q. Look and see if in the month of December, 1875, there is a check for somewhere in the vicinity of $900, or between $700 and $900; and if so, give us the date.
A. I have only made a transcript of the account up to November 19, 1875. That was the last time we balanced it.
Q. Have you there as well the deposit account as the debtor account?
A. I have.
Q. Give us the date at which a deposit of $3,000 appears to have been made by Mr. Marsh, beginning at November 1, 1870.
A. November 1, 1870, $3,000 was deposited.
Q. Now look to about January 17, 1871.
A. January 16, 1871, $3,000 was deposited.
Q. About April 17 or 18, 1871?
A. April 12, $3,000 was deposited.
Q. Now, about July 25, or in that neighborhood?
A. July 17, 1871, $3,000 was deposited.
Q. About November 10, 1871?
A. Three thousand dollars was deposited then.
Q. About 15th January, 1872?
A. Twenty-nine hundred and ninety-seven dollars was deposited then.
Q. About the 13th of June, 1872?
A. On the 31st of May, 1872, $2,997 was deposited.
Q. Now, take about the 22d of November, 1872.
A. No, sir; none there.
Q. Any preceding that?
A. Yes; 24th October, 1872, $3,296.70.
Q. Now, say as to the 16th June, 1873, or about that time; that is, any time preceding that or immediately following it?
A. I find a deposit on the 9th of June, 1873, of $2,000; and on the 2d of June, $1,000.
Q. Have you any deposits in round three thousand dollars; say about the 4th of November, 1873?
A. No, sir.
Q. How about April 10, 1874?
A. No $3,000 then.
Q. Now turn to the 10th of April, 1874, or in that neighborhood.
A. The only sum of any account is the 8th of April, 1874.
Q. How much?
A. Two thousand dollars.
Q. Are there any sums following it or preceding it of large amount?
A. Yes, sir. The deposit immediately preceding it was on the 19th of March.
Q. How much?
A. Nine thousand and——
Q. That we do not care about; it has nothing to do with this matter. Was there any deposit October 9, 1874, or in that neighborhood?
A. October 5, 1874.
Q. How much?
A. Twenty-nine hundred and ninety-nine dollars and fifty-four cents.
Q. Now take May 25, 1875, or about then, immediately before or immediately after.
A. None.
Q. Now turn to the latter part of October, 1875, or the early part of November, 1875, and see what the total amount of certain drafts was, and give the date.
A. I find none.
Q. Look then at the 30th of November.
A. The account closes the 23d of November, 1875. This transcript ends then when the account was balanced.
Q. Look then at the 13th of November.
A. None. The only large amount is on the 17th, $1,000.
Q. On the 17th of November.
A. Yes, sir; November 17, 1875.

Mr. Manager McMAHON. We are through with this witness.

The PRESIDENT *pro tempore*. Do counsel desire to ask any questions?

Mr. CARPENTER. I do not see that the testimony touches the case any way. We have no questions to put.

The PRESIDENT *pro tempore*. The witness is excused.

Mr. CARPENTER. I will ask one question of the witness before he goes. (To the witness.) What was it you held in your hand?

A. A transcript of Caleb P. Marsh's account from my ledger.
Q. (By Mr. CARPENTER.) Who made it?
A. I made it.
Q. Is the ledger here?
A. Yes, sir.

Mr. Manager McMAHON. The books are here, not only the ledger but the check-books.

Mr. CARPENTER. Do not bring them in.

Mr. Manager McMAHON. You do not want to see them?

Mr. CARPENTER. O, no.

Mr. WHYTE. Before the next witness is called, I offer the following order.

The PRESIDENT *pro tempore*. The order will be read.

The Chief Clerk read as follows:

Ordered, That at half past five o'clock p. m. this court take a recess until half past seven o'clock p. m.

Mr. CARPENTER. Mr. President, I want to say to the Senate in regard to night sessions in this trial, that we have no desire to prolong the trial a minute longer than is absolutely necessary. We are not enjoying it to any such extent as to make us anxious to have it last a day longer than it ought to last. The Senate can see from day to day whether we are acting in good faith in this or not; and if they find on either side any disposition not to do so, they can then apply the lash. Every lawyer knows that under the circumstances of this case, if we desire in good faith to shorten the trial, the only way to accomplish that is to give us the time for preparation. Our witnesses are subpœnaed from all parts of the United States; we have to see them after they get here, find out what they know, what we can prove by them, and prepare memoranda for examination of witnesses. Now I believe that if the court will give us sessions from twelve o'clock till five, or from twelve o'clock to four even, and give us the evening and the morning for preparation, the trial will be shortened rather than prolonged. We will, so far as we can accommodate, on both sides about admitting facts that are not disputed; but I do appeal to Senators, and especially to Senators who have been lawyers, and to Senators who being lawyers know that there is a little more anxiety; a little more waste in the performance of the duty of counsel in an important criminal case than there is in the ordinary routine of duty in the Senate, to give us a chance to live through this trial on our assurance that we will in good faith do every thing in our power to make it as brief as possible. But to sit all the afternoon in this heated Chamber, and then come back here at night and sit till ten or eleven o'clock—and if it is not the purpose to sit as late as that it is hardly worth while to come back in the evening—will just break us down before we get through the trial. I am certain that if any of us get sick, this court, like every other court, would be considerate enough and humane enough to adjourn until we were well. So that I believe that economy of time—and I know how important that is to the Senate—will be secured by giving us only day sessions.

Mr. WHYTE. Mr. President, under the circumstances stated by the counsel I will withdraw the order.

The PRESIDENT *pro tempore*. The order is withdrawn.

CHARLES N. VILAS sworn and examined.

By Mr. Manager McMAHON:

Question. Are you acquainted with General Belknap?

Answer. I am.

Q. Where do you reside?

A. In New York.

Q. What is your occupation?

A. Cashier of the Fifth Avenue Hotel.

Q. How long have you been in the Fifth Avenue Hotel?

A. Nearly four years.

Q. Have you been employed there otherwise than as cashier?

A. Yes, sir.

Q. Have you brought the registers of the Fifth Avenue Hotel with you of certain dates specified?

A. Yes, sir; I have.

Q. Have you brought with you also the transient ledger-book showing the accounts of individuals?

A. I have.

Q. Does your transient ledger-book show the account of each individual who arrives by name?

A. It does.

Mr. Manager McMAHON. I desire to state to the Senate that under those specifications which we do not substantiate by an express package or a certificate of deposit, we propose to prove that General Belknap was in New York City and that the money was paid to him there, with one exception. (To the witness.) Now let us know if General Belknap was in New York City on the 24th and 25th of July, 1871, at the Fifth Avenue Hotel?

A. Our books show that General Belknap arrived at the Fifth Avenue Hotel on the 24th day of July, 1871, at breakfast, and left on the 26th of July after dinner.

Q. Now see whether you have any record of his being there on the 13th of June, 1872?

Mr. BLACK. This is no record.

Mr. Manager McMAHON. This is merely an abstract taken from the books, which are here. If you desire to see them, you can see them.

Mr. BLACK. We do not care.

Mr. Manager McMAHON. The books are here, and I have inspected them myself.

The WITNESS. I have no recollection of General Belknap being there on that date.

Q. (By Mr. Manager McMAHON:) On the 13th of June, 1872?

A. No record of that.

Q. Now take the 22d of November, 1872?

A. I find that General Belknap arrived at dinner the 21st of November, 1872, and left on the 24th after dinner.

Q. Now see whether you have a record of the 16th of June, 1873?

Mr. CARPENTER. Was the book kept by this witness?

Mr. Manager McMAHON. The register is not required to be kept by anybody. General Belknap's signature is on the register. The witness speaks now from the register; and the length of time he remained is determined by the transient ledger. We have here both the register and the transient ledger. (To the witness.) The facts to which I am calling your attention you have derived, have you not, from the register which you have here as well as the transient ledger?

The WITNESS. Yes, sir. The register shows his arrival, while the transient book shows the time he remained at the hotel on each occasion.

Q. (By Mr. Manager McMAHON.) Now turn to June 16, 1873, or about the 16th of June, 1873.

A. General Belknap arrived June 16, 1873, at dinner, and left on the 18th after dinner.

Mr. Manager McMAHON. I will say to the gentlemen here (as of course we do not want any objection made after the witness has gone) that his books are here, and this transcript is made from them. If you desire the books, we will bring them in and let you examine them.

Mr. BLACK. It will be rather late to make an objection after you have proved the fact in this way, with our consent.

Mr. Manager McMAHON. If you think so we are probably in accord.

(To the witness.) When you state in your testimony that General Belknap arrived on a certain date and remained until another time, you mean that he is charged on the books with board at the hotel from that first date to the subsequent date?

A. Yes, sir.

Q. (By Mr. Manager McMAHON.) Where was General Belknap on the 15th and 16th days of August, 1870?

A. We have an account with General Belknap dating from the 15th of August, 1870, at tea and leaving on the 16th of August after breakfast.

Q. Now see whether General Belknap was at the hotel about the 15th day of September, 1870.

A. I am not positive as to that date. We have an account with him which is closed.

Q. Are you familiar with the handwriting of General Belknap?

A. I am somewhat.

Cross-examined by Mr. CARPENTER:

Q. Did you keep either of these books?

A. I kept one of them a portion of the time; not the whole time.

Q. Did you keep the pay-book?

A. Yes, sir; it comes under the cashier's desk.

Q. Are you so familiar with the handwriting of General Belknap that you could swear to it?

A. I think I am.

Re-examined by Mr. Manager McMAHON:

Q. At the suggestion of Mr. LAPHAM I wish to ask you whether upon the register General Belknap's name is entered in his own handwriting?

A. In some cases it is and in some cases it is not.

Q. Do you know the handwriting where it is not his?

A. I do.

Q. Whose handwriting was it?

A. The clerk's handwriting at the counter at the time he arrived.

WILLIAM H. BARNARD sworn and examined.

By Mr. Manager McMAHON:

Question. Where do you reside?

Answer. In Washington.

Q. What is your present occupation?

A. I am clerk to the receiver of the First National Bank of Washington.

Q. How long have you been in the employ of the receiver of the First National Bank of Washington?

A. Since the bank failed.

Q. What relation did you sustain to it prior to its failure?

A. I was a clerk in the bank.

Q. For how many years?

A. Since 1865.

Q. Have you the deposit tickets of the First National Bank of Washington so far as they relate to General Belknap and during the existence of the bank?

A. I have them for 1870, 1871, 1872, and 1873.

Q. Break now the package of 1872, and see if you have a deposit ticket of November 27, 1872, for $2,574.56.

A. Yes, sir; $2,574.56.

Q. Whose handwriting is that deposit ticket in?

A. Mr. Belknap's handwriting.

Q. State what that little ticket is, and by whom it is executed, and for what purpose?

A. A deposit ticket is a ticket that is made out on making a deposit of money in bank.

Q. Did your bank require the depositor to make it out in his own handwriting?

A. No; they did not require it.

Q. It is done?

A. Sometimes it is done in that way and sometimes the clerk at the counter does it.

Q. Let me have that ticket. [The witness handed the ticket to the manager.]

Mr. Manager McMAHON. We offer this little paper in evidence. I will read it so that the Senate may all hear it:

Deposited with the First National Bank by Wm. W. Belknap, Nov. 27, 1872:

U. S. bank notes	$1,460 00
Checks as follows	1,114 56
	2,574 56

Mr. EDMUNDS. In whose handwriting did the witness say that was?

Mr. Manager McMAHON. He said that was in General Belknap's handwriting. Is not that so, Mr. Barnard?

The WITNESS. Yes, sir.

[The ticket was handed to the counsel for the defense, examined by them, and returned to the managers.]

Q. (By Mr. McMAHON.) Into whose account would that money and those checks that were deposited pass?

A. Pass into the account of General Belknap.

Q. Did it pass into his account?

A. Yes, sir.

Q. His private account?

A. Yes, sir.

Q. State how you discovered this ticket.

A. I found it in the files of the bank.

Q. What led you to look for this ticket? State whether prior to looking for this ticket you examined his account.

A. I examined the account on the ledger.

Q. Have you a copy of his ledger account with you?

A. No, sir; I have not.

Q. Have you the original ledger at the office?

A. Yes, sir.

Mr. Manager McMAHON. Shall we produce it, gentlemen?

Mr. CARPENTER. No; make out a statement, and, if you prove it to be correct, it will be all right,

Mr. Manager McMAHON. I have a certified copy I think. (To the witness.) Now turn to the date of 19th of June, 1873.

The WITNESS. Fifteen hundred dollars was deposited June 19, 1873.

Q. (By Mr. Manager McMAHON.) Read it out.

A. "Deposited with the First National Bank by Wm. W. Belknap, June 19, 73, U. S. bank notes, 1,500."

Q. In that connection explain to the court if a man deposits a check and deposits money or drafts how they are separated and divided on the ticket.

A. It has printed on it "U. S. notes," and opposite that is carried out the amount, "$1,500." Below that is "Checks, as follows," and the checks are scheduled below that.

Q. In whose handwriting is that deposit ticket?

A. Mr. Belknap's handwriting, I should say.

Q. Did that money pass into his individual account in the bank?

A. Yes, sir.

Q. Now take the year 1872 again. Was there a deposit on the 29th of January, 1872, of $1,732?

A. I have the ticket.

Deposited with the First National Bank
By Wm. W. Belknap,

Jany. 29, 1872.

	Dollars.	Cents.
U. S. and bank-notes		
Checks as follows:		
	$1,500	
	200	
	25	
	7	87
	1,732	87

Q. Look at this certificate of deposit, [handing the witness the certificate of deposit for $1,500, No. 783, and dated January 15, 1872, produced by Richard King,] and see whether that passed through your bank.

A. Yes, sir; that evidently passed through the First National Bank of Washington.

Q. Did that pass to the credit of General Belknap on the books of the bank?

A. I cannot say that without examining.

Q. Have you the "record of drafts mailed?"

A. Yes, sir.

Q. Is that here?

A. Yes, sir.

Q. Will that show?

A. That will show if the draft was deposited by him.

Q. If this draft or certificate was passed to his credit, will it not show that fact?

A. It will not show it passed to his credit.

Mr. Manager McMAHON. What we want to show is that it passed into Belknap's individual account.

Mr. CARPENTER. It is not worth while going into that; we have admitted that those certificates were drawn.

Mr. Manager McMAHON. Very well; we need not go any further into that matter, then. (To the witness.) Now look at your "record of drafts mailed" and see upon what date this fifteen-hundred-dollar certificate or draft upon New York passed through your bank, and see whether it corresponds with the date of the deposit of fifteen-hundred-dollar check to which you have testified.

A. There is a record of drafts mailed——

Q. (By Mr. CARPENTER.) Did you keep that book yourself?

A. No, sir.

Q. Do you know anything of your own knowledge about the entries in it?

A. I do not understand the question.

Mr. Manager McMAHON. It is not in his handwriting, I admit, but we can easily get the witness to state in whose handwriting it is.

Mr. CARPENTER. These are the things we have admitted three or four times. If you will not take our word and must have proof, you had better have legal proof.

Mr. Manager McMAHON. We will take your word now, you having given it a second time.

Mr. CARPENTER. We admit those entries as stated in the book.

Mr. Manager McMAHON. What we wanted to prove by him particularly now was that the deposit of $1,500 of the 29th of January was the proceeds of the certificate of deposit which was this day mailed to New York.

Mr. CARPENTER. That we should like to have proved, because we do not understand that to be the fact.

Mr. Manager McMAHON. It is the fact unquestionably. (To the witness.) Look at the handwriting there on the "record of drafts mailed" and tell me in whose handwriting that book is kept.

A. I do not know this handwriting. I can ascertain. The handwriting on the page before is my own.

Mr. Manager McMAHON. It is the same draft. We only want to connect it, because two weeks subsequently it was deposited to Belknap's credit. We have no more questions to ask this witness now.

Mr. CARPENTER. We have none.

CHARLES F. EMERY sworn and examined.

By Mr. Manager McMAHON:

Question. Where do you reside?

Answer. At Maroa, Illinois.

Q. What is your occupation?

A. A banker.

Q. Do you invest money for people?

A. I do.

Q. State whether this certificate ever passed through your hands; look at it. [Exhibiting to the witness certificate No. 748 for $1,500, dated November 10, 1871, produced by Richard King.]

A. Yes, sir; it did.

Q. From whom did you receive this certificate of deposit for $1,500?

A. From W. W. Belknap.

Q. What instructions accompanied it, if any?

A. I was instructed to invest it for him in a real-estate mortgage.

Q. Did you do so?

A. I did.

Q. How much; $1,500?

A. Fifteen hundred dollars.

Q. To whom did you make the note payable?

A. To W. W. Belknap.

Q. You transmitted the note and mortgage to him?

A. Yes, sir.

Cross-examined by Mr. CARPENTER:

Q. Has that money been paid?

A. It has not been.

Q. What has been done with that investment?

A. The money was invested for three years, and at the end of three years the party borrowing the money desired to keep it three years longer. The note and papers were returned to me from General Belknap with an indorsement to Mrs. A. T. Belknap, I think, and I re-invested the money for three years longer for Mrs. A. T. Belknap, and the party now has the money.

Q. Was not that assignment made to the name of "A. T. Bower," instead of "Mrs. A. T. Belknap?"

A. I think not, but I am not certain; my impression is not.

Q. Try to think of the time; and when we show when the marriage took place that may settle the fact. Try to think of the time the assignment was made.

A. The date of the loan was the 21st of December, 1871. The loan was made for three years from that time.

Q. Now, the question is whether that assignment was not made before the termination of the three years.

A. I have no knowledge of when that assignment was made. I did not see the notes until nearly three years after I made that loan.

Q. When the notes were returned to you, was the loan then due? Had the three years expired?

A. The three years had expired when the note was returned to me with instructions to make a reloan for Mrs. A. T. Belknap, if I remember rightly, but still I am not certain of that fact.

Q. You stated the date of the first loan; then, of course, it matured in three years after that.

A. Yes, sir.

Q. The loan stands to-day in the name of Mrs. Belknap?

A. Yes, sir.

Q. Renewed?

A. Yes, sir.

Q. Having how much time to run?

A. It was renewed for three years from the 21st day of December, 1874, making it come due in 1877.

Re-examined by Mr. Manager McMAHON:

Q. To whom was the interest sent during the first three years of this investment? You collected the interest, did you not?

A. Yes, sir.

Q. To whom did you send that interest?

A. I sent it a part of the time to W. W. Belknap. I am not confident whether it was sent all the time during those three years to Mr. Belknap or not.

Recross-examined by Mr. CARPENTER:

Q. Have you collected interest since the reloan?

A. Yes, sir.

Q. To whom have you remitted that?

A. To Mrs. Belknap. I have remitted a draft to W. W. Belknap payable to the order of Mrs. Belknap.

Q. (By Mr. WRIGHT.) Was this second arrangement after the maturity of the first note?

A. Yes, sir.

Q. Do you know how long afterward?

A. The loan matured in three years. I loaned this money upon a mortgage for three years' time. When the three years expired I reloaned the money for three years longer.

Mr. CARPENTER. In the name of Mrs. Belknap.

(By Mr. WRIGHT:)

Q. How long after the first note matured was the second arrangement made?

A. It was really made before the maturity of the note. In renewing these real-estate mortgages there is no change made except in taking new interest notes; the old mortgage stands good until it is paid. I take new interest notes, and I frequently take these notes a week, or two weeks, or three weeks before the loan matures; and my impression is that the date of the new papers or the new notes was

upon the exact day that the old loan matured, the 21st day of December, 1874.

Q. The inquiry I made is as to when you had instructions to make the change, whether before or after the maturity of the first loan?

A. It was some time before.

Re-examined by Mr. Manager McMAHON:

Q. Does the old mortgage still stand in the name of W. W. Belknap?

A. The theory of these mortgages——

Q. I want the fact.

A. I will tell you the fact. They are made in the name of W. W. Belknap. The moment W. W. Belknap indorses those notes it carries the mortgage with it to whoever he indorses it to, and the new interest notes are made a renewal of the old note, and they read in the note that a certain new loan was made upon such a date payable to W. W. Belknap, and by him indorsed to so and so, and the new notes read "due in six months after date" or "due upon such a date so many dollars," payable to the order of the party then owning the note.

Q. The question now is, is there any new note or new mortgage executed?

A. There was no new mortgage, but new interest notes were executed.

Q. New notes for the principal, for the $1,500?

A. There was no new note issued for the principal.

Q. Simply new interest notes?

A. Simply new interest notes.

Q. And the old mortgage and the old notes stand?

A. Yes, sir; the old notes and the old mortgage stand.

Q. You sent them here to Washington?

A. No.

Q. How did I understand you to say you have been sending this interest since the change of the investment; in what shape?

A. I have been sending it in a draft payable to the order of Mrs. A. T. Belknap.

Q. Sent to whom?

A. Sent to General Belknap.

Recross-examined by Mr. CARPENTER:

Q. Was Mr. Belknap's assignment upon the papers when they were sent to you the last time?

A. The principal note?

Q. Yes.

A. It was.

Q. Can you not recollect whether that assignment read to Mrs. Belknap or to Mrs. Bower?

A. No, sir; I cannot.

Q. When did it mature?

A. It matured on the 21st day of December, 1874.

E. D. TOWNSEND sworn and examined.

By Mr. Manager McMAHON:

Question. General, is Fort Sill one of the military posts of the United States?

Answer. It is.

Mr. Manager McMAHON. I offer now in evidence a certified copy of the appointment at Fort Sill, addressed to John S. Evans. I ask the Secretary to read it.

The Chief Clerk read as follows:

WAR DEPARTMENT,
Washington City, October 10, 1870.

SIR: Under the provisions of section 22 of the act of July 15, 1870, you are hereby appointed a post-trader at Fort Sill, Indian Territory, and will be required to assume your duties as such within ninety days from the date of this appointment. You will please report to this Department through the Adjutant-General's Office your acceptance or non-acceptance of this appointment.

WM. W. BELKNAP,
Secretary of War.

Mr. JOHN S. EVANS,
Care of C. P. Marsh, Esq., 51 West Thirty-fifth street, New York City.

Q. (By Mr. Manager McMAHON.) How long have you been Adjutant-General?

A. I have been in charge of the Department since March, 1863, holding the commission of Adjutant-General since February, 1869.

Q. Who was acting and actually Secretary of War from, say, July 1, 1870, up to last March?

A. General William W. Belknap, about those dates.

Mr. Manager McMAHON. We offer these commissions, certified copies. There will be no objection to them.

Mr. CARPENTER. Let the Clerk read them so that they may go into the record. We want everything printed that is put in evidence.

The Chief Clerk read as follows:

UNITED STATES OF AMERICA, DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting:

I certify that the document hereunto annexed is a true copy from the record in this Department of a commission appointing William W. Belknap to be Secretary of the Department of War,

In testimony whereof, I, Hamilton Fish, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 26th day of April, A. D. 1876, and of the Independence of the United States of America the one hundredth.

[SEAL.] HAMILTON FISH.

Ulysses S. Grant, President of the United States of America.

To all who shall see these presents, greeting:

Know ye, that reposing special trust and confidence in the patriotism, integrity, and abilities of William W. Belknap, of Iowa, I do appoint him to be Secretary for the Department of War, and do authorize and empower him to execute and fulfill the duties of that office according to law, and to have and to hold the said office, with all the powers, privileges, and emoluments to the same of right appertaining, unto him, the said William W. Belknap, until the end of the next session of the Senate of the United States, and no longer, subject to the conditions prescribed by law.

In testimony whereof I have caused these letters to be made patent and the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, the 25th day of October, in the year of our Lord 1869, and of the Independence of the United States of America the ninety-fourth.

[L. S.] U. S. GRANT.

By the President:
HAMILTON FISH,
Secretary of State.

UNITED STATES OF AMERICA, DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting:

I certify that the document hereunto annexed is a true copy from the record in this Department of a commission appointing William W. Belknap to be Secretary of the Department of War.

In testimony whereof I, Hamilton Fish, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 26th day of April, A. D. 1876, and of the Independence of the United States of America the one hundredth.

[SEAL.] HAMILTON FISH.

Ulysses S. Grant, President of the United States of America.

To all who shall see these presents, greeting:

Know ye, that reposing special trust and confidence in the patriotism, integrity, and abilities of William W. Belknap, of Iowa, I have nominated, and by and with the advice and consent of the Senate, do appoint him to be Secretary for the Department of War, and do authorize and empower him to execute and fulfill the duties of that office according to law, and to have and to hold the said office, with all the powers, privileges, and emoluments to the same of right appertaining unto him, the said William W. Belknap, subject to the conditions prescribed by law.

In testimony whereof I have caused these letters to be made patent and the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, the 8th day of Dec., in the year of our Lord 1869, and of the Independence of the U. S. of America the ninety-fourth.

[L. S.] U. S. GRANT.

By the President:
HAMILTON FISH,
Secretary of State.

UNITED STATES OF AMERICA, DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting:

I certify that the document hereunto annexed is a true copy from the record in this Department of a commission appointing William W. Belknap to be Secretary of the Department of War.

In testimony whereof I, Hamilton Fish, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 26th day of April, A. D. 1876, and of the Independence of the United States of America the one hundredth.

[SEAL.] HAMILTON FISH.

Ulysses S. Grant, President of the United States of America.

To all who shall see these presents, greeting:

Know ye, that reposing special trust and confidence in the patriotism, integrity, and abilities of Wm. W. Belknap, of Iowa, I have nominated, and by and with the advice and consent of the Senate do appoint, him to be Secretary for the Department of War, and do authorize and empower him to execute and fulfill the duties of that office according to law, and to have and to hold the said office, with all the powers, privileges, and emoluments to the same of right appertaining unto him, the said Wm. W. Belknap, subject to the conditions prescribed by law.

In testimony whereof I have caused these letters to be made patent and the seal of the United States to be hereunto affixed.

Given under my hand at the city of Washington, the 17th day of March, in the year of our Lord 1873, and of the Independence of the United States of America the ninety-seventh.

[L. S.] U. S. GRANT.

By the President:
HAMILTON FISH,
Secretary of State.

Mr. CARPENTER, (to Mr. Manager McMAHON.) Do you rely upon all those commissions as evidence of character?

Mr. Manager McMAHON. As evidence of confidence. I presume they express confidence.

Q. (To the witness.) Have you the original papers relating to the appointment of a post-trader at Fort Sill and the management of that place.

A. Yes, sir; all that are on file.

Q. Have you the application of Mr. Marsh dated the 16th day of August, 1870?

A. I have. [Producing letter.]

Mr. Manager McMAHON. Hand it to the Secretary and let him read it, if you please.

The Chief Clerk read as follows:

NO. 51 WEST THIRTY-FIFTH STREET,
Tuesday, 16th August, 1870.

MY DEAR SIR: You will remember my application to you in Washington a few days since for an Indian tradership. Following your suggestion I wrote to a friend in Kansas and yesterday received a reply. My friend advises me to apply for Fort

Sill and Camp Supply. He says also that he is informed that the latter post is to be abandoned and the supplies concentrated at Fort Sill, but that you will know the facts in regard to this rumor—if true it will be only worth while to apply for the fort. This post was not mentioned by you as among those already promised, and I venture to hope has not been.

I write to you at once, so that in case it is yet free my application may be filed. I shall send to Ohio immediately for the recommendations of Senator SHERMAN and Representative Stevenson, which I can secure without trouble, and as soon as received will send a formal application.

Please reserve the two posts if possible.

I am, very truly, your obedient servant,

C. P. MARSH.

General W. W. BELKNAP.

P. S.—If these posts have been promised, I shall be much obliged if you will inform me at your earliest convenience.

Q. (By Mr. Manager McMAHON.) Have you the recommendations accompanying that application?

A. [Producing paper.] I have one signed by Hon. Job E. Stevenson, member of Congress.

Mr. Manager McMAHON. Please hand that to the Secretary and let him read it.

The Chief Clerk read as follows:

TILDEN, STEVENSON, & GOODMAN,
ATTORNEYS AND COUNSELORS AT LAW,
Cincinnati, November 2, 1870.

DEAR SIR: I have pleasure in recommending Mr. Caleb P. Marsh for appointment as post-trader in the Indian country. He is an old citizen, well qualified, and a sound republican.

Yours, truly,

JOB E. STEVENSON, *M. C.*

Hon. W. W. BELKNAP,
Secretary of War.

Mr. Manager McMAHON. We desire to know if that is the only recommendation filed by Mr. Marsh?

Mr. CARPENTER. That was the only one.

Mr. Manager McMAHON. That is understood, then.

The WITNESS. It is the only one I find.

Q. (By Mr. Manager McMAHON.) Now turn to the application of John S. Evans.

A. [Producing paper.] I have one from John S. Evans to Major-General Grierson dated June 24, 1870, with inclosures from officers, recommending him.

Mr. Manager McMAHON. Please hand that paper to the Secretary and let him read it.

The WITNESS. I have also another one dated August 18, 1870, from Mr. Evans.

The Chief Clerk read as follows:

FORT SILL, INDIAN TERRITORY, *June* 24, 1870.

GENERAL: I respectfully submit the inclosed recommendation of the officers of the garrison for my appointment to the position of post-trader, as provided for in section 22 of the bill for the re-organization of the Army that has recently passed Congress.

Believing my interests to be secure for some time in the future, I have, under the privileges granted by original permit from General Sheridan and a recent approval of the same by the succeeding department commander, made extensive improvements and large investments at this post, in view of which fact I take the liberty of urging my claim to the appointment under the existing law relating to post-traders; and should this application meet your favorable consideration, would respectfully request your approval and recommendation to the proper authority for said appointment.

I am, general, very respectfully, your obedient servant,

JOHN S. EVANS.

Brevet Major-General B. H. GRIERSON,
Colonel Tenth Cavalry, Commanding Post.

[Indorsement.]

HEADQUARTERS, FORT SILL, INDIAN TERRITORY,
Fort Sill, Indian Territory, June 25, 1870.

The within application of Mr. John S. Evans for the position of post-trader at this point under the provisions of the twenty-second section of the new Army bill is hereby approved.

Mr. Evans is gentlemanly, obliging, generous in his dealings, and a universal favorite, and in every way well fitted for the position. He has expended a much larger amount of money in improvements than both the other traders, and he has constantly kept on hand a very extensive assortment of goods, the only stock suited to the wants of officers and soldiers of the garrison.

In case there should be but one trader allowed at this post, in my judgment he is much better entitled to the position than any one else, as he attends strictly and personally to his business. Neither of the other traders (E. H. Durfee and J. C. Dent) have ever been here, they being represented by agents. In view of these facts, in consideration of the interests of the troops, and in justice to Mr. Evans, I urgently recommend to the Secretary of War or to the competent authority his appointment.

B. H. GRIERSON,
Colonel Tenth Cavalry, Brevet Major-General U. S. A., Commanding Post.

Q. (By Mr. Manager McMAHON.) Did another inclosure accompany that, a recommendation of the officers stationed at Fort Sill?

A. It did. I handed it to the Secretary.

Mr. Manager McMAHON, (to the Secretary.) Read that next recommendation.

The Chief Clerk read as follows:

FORT SILL, INDIAN TERRITORY, ——, 1870.

To the Hon. SECRETARY OF WAR,
Washington, D. C.:

We, the undersigned, officers of the Army at this post, would most respectfully recommend Messrs. John S. Evans and John I. Fisher, the present post-traders (under the firm name of J. S. Evans & Co.) at this post, for the position of post-traders under the new act.

Being personally acquainted with these gentlemen, we cheerfully recommend them to your consideration, and know them to be in every way worthy of the position.

Very respectfully,

W. W. SANDERS,
Captain and Brevet Colonel, U. S. A.
ORLANDO H. MOORE,
Brevet Lieutenant-Colonel and Captain Sixth Infantry.
JAMES POWELL,
Captain Sixth Infantry, U. S. A.
W. H. FORWOOD,
Assistant Surgeon, U. S. A., Post Surgeon.
J. T. MORRISON,
First Lieutenant Tenth Cavalry.
R. H. DAY,
First Lieutenant Sixth Infantry.
D. S. CRAFT,
Second Lieutenant Sixth Infantry, Brevet Captain U. S. A.
S. P. JOCELYN,
First Lieutenant Sixth Infantry.
A. MACOMB WESTERVILLE,
Second Lieutenant Sixth Infantry.
GEO. P. SHERWOOD,
First Lieutenant Sixth Infantry.
WM. R. HARMON,
Second Lieutenant Tenth Cavalry.
R. H. McKAY,
Acting Assistant Surgeon, U. S. A.
J. WILL MYERS,
Second Lieutenant Tenth United States Cavalry.
H. S. KILBOURNE,
Acting Assistant Surgeon, U. S. A.
WM. E. DOYLE,
Second Lieutenant Tenth Cavalry.
ROBERT GRAY,
Captain Tenth Cavalry.
GEO. ROBINSON,
Captain Tenth United States Cavalry.
A. F. ROCKWELL,
Brevet Lieutenant-Colonel and Assistant Quartermaster, U. S. A.

Mr. CONKLING. Were these officers at Fort Sill at the time?

Mr. Manager McMAHON. That is our understanding. We may be incorrect about it.

See if there is not a mark across the face of the paper.

The CHIEF CLERK. It is marked on the face:

Approved: B. H. Grierson, colonel and brevet major-general U. S. Army, commanding post.

Q. (By Mr. Manager McMAHON.) I should like to know if that paper contains anything on it showing the date it was filed at Washington?

A. It is marked, "Received at Adjutant-General's Office July 25, 1870."

Q. That indicates that it was on file in the Department after the 25th of July, 1870?

A. Yes, sir.

Q. How soon was it communicated through your office to the Secretary of War?

A. That does not appear.

Q. Did the application of Mr. Marsh pass through your office to the Adjutant-General or did it go directly to the Secretary of War?

A. It went directly to the Secretary of War. It is addressed to him, if I remember aright.

Q. Look at the application of C. P. Marsh and see when it did pass through your office for the first time.

A. I believe you have it. The original passed out of my hands a moment ago.

Mr. Manager LYNDE. Here is the original. [Handing paper to witness.]

The WITNESS, [examining paper.] There are two dates of receipt marked on the original application of Mr. Marsh. One, I think, is in the handwriting of the Secretary of War, "Received August 16, 1870;" and the other one is, "Received, Adjutant-General's Office, September 23, 1870."

Q. [By Mr. Manager McMAHON.] See if you have a letter there from John S. Evans, of the date of August 18, 1870, from Philadelphia.

A. [Producing paper.] Here it is.

Q. To whom is it addressed?

A. It is addressed at the bottom "To the honorable the Secretary of War United States, Washington, D. C."

Q. Is there any indorsement on it showing the date when it was received by the Secretary of War?

A. No, sir; it was an inclosure in another letter.

Q. At what time was it received in your office?

A. September 23, 1870.

Mr. Manager McMAHON. Let the Secretary read that letter, if you please.

Mr. CARPENTER. That will not do. Is Evans's letter evidence against us?

Mr. Manager McMAHON. It was addressed to the Secretary of War.

Mr. CARPENTER. Does that make it evidence?

Mr. Manager McMAHON. It is an application for a post-tradership at Fort Sill.

Mr. CARPENTER. I should hate to be tried by every letter which I have received.

Mr. Manager McMAHON. You would not need to be tried if you

had been behaving right after the letter was received; but if a man does not behave himself the case is different.

Mr. CARPENTER. Let me see what it is. [Examining paper.] Very well.

Mr. Manager McMAHON. Read that letter, Mr. Secretary.

The Chief Clerk read as follows:

PHILADELPHIA, PENNSYLVANIA, *August* 18, 1870.

SIR: I take the liberty of calling your attention to the accompanying recommendation by the officers of the garrison at Fort Sill, Indian Territory, with the indorsement of the commanding officer, General Grierson, for my appointment as "trader" at said post.

Permit me to state, in support of my application, that acting upon the belief that my present appointment was in conformity with the existing laws regulating "traders," and that the same would be of a reasonably permanent character, I have, in good faith, with the view of a satisfactory provision for the prosecution of my business, and in the interest and convenience of the troops, with care for objects beyond those, leading to personal aggrandizement, made extensive improvements in buildings, &c., and have made heavy investments of a mercantile character, amounting in the aggregate to more than $80,000.

I beg also to state that I have formed a copartnership with Mr. E. H. Durfee, now trading at the same place under like authority, and our investments at Fort Sill combined aggregate a sum exceeding $125,000.

In view, then, of the interests that we have at stake and of the vital importance of retaining the protection heretofore enjoyed, because, if the same shall be withdrawn and in the event of our being thrown out of the privileges and protection we now have, our property would become almost valueless, I most respectfully solicit an appointment for Mr. Durfee and myself to continue trading at said military post as a firm under the style of Evans & Durfee, under such regulations and restrictions as may in future govern "traders."

Craving indulgence for thus trespassing upon your time and patience, which nothing but threatened injury would have induced, I have the honor to be your obedient servant,

JOHN S. EVANS.

The Hon. SECRETARY OF WAR, U. S.,
Washington, D. C.

Mr. CARPENTER. I wish to know from the managers if they expect to have Mr. Evans here as a witness?

Mr. Manager McMAHON. Mr. Evans has been under subpœna, and will be under attachment if he does not put in an appearance.

Mr. CARPENTER. I have no objection to the letter being received with the understanding that if he is not to be here as a witness the letter will not be used against us.

Mr. Manager McMAHON. We claim it to be evidence, whether he comes or does not come. We claim it, independently of his being or not being here, as an application to the Secretary of War and coming under his knowledge. We make no condition.

Mr. CARPENTER. We do not propose to be ridden over so easily on a point of that kind.

Mr. Manager McMAHON. I say we make no conditions; that is all.

Mr. CARPENTER. If Mr. Evans, Mr. Smith, or anybody else can write a letter to Mr. Belknap and that letter becomes evidence against him, we are in a remarkable state of the law.

Mr. Manager HOAR. I suppose there is no objection to allowing the counsel to avail himself of the objection hereafter, if Mr. Evans does not come.

Mr. CARPENTER. Very well.

Mr. Manager HOAR, (to Mr. Manager McMAHON.) That will answer your purpose?

Mr. Manager McMAHON. That will do.

Mr. CARPENTER. It will be received, then, subject to objection, which may be made hereafter.

The PRESIDENT *pro tempore*. The letter will be received with that understanding.

Mr. EDMUNDS. I move that the Senate sitting for this trial take a recess until half past seven o'clock.

Mr. CARPENTER. Is the motion made with an understanding that it is to be a recess of the trial, to go on to-night?

Mr. EDMUNDS. Yes, sir.

Mr. CARPENTER. I want to just appeal——

Mr. EDMUNDS. I submit that on a question of this kind counsel are not entitled to be heard.

Mr. CARPENTER. I insist that we are, and I want to argue the question.

The PRESIDENT *pro tempore*. The Chair overrules the point of order.

Mr. EDMUNDS. Very good.

Mr. CARPENTER. If a Senator can rise here and enter an order which takes away one of our rights, or which takes away one of our chances of living long enough to make our rights apparent, he can enter an order taking them all away, and we cannot be heard upon it. I protest against that. I protest that every order which is to affect us here in this cause we have a right to be heard upon. "Strike, but hear me," is the foundation of all jurisprudence in all civilized lands. Then I want to make an appeal to every Senator who has any of the "milk of human kindness" in him not to drag us through a night trial.

The PRESIDENT *pro tempore*. The Senator from Vermont moves that the Senate take a recess until half past seven o'clock.

The motion was not agreed to.

Mr. INGALLS. I move that the Senate sitting as a court do now adjourn.

The motion was agreed to; there being on a division—ayes 31, noes 14; and the Senate sitting for the trial of the impeachment of W. W. Belknap adjourned until to-morrow at one o'clock.

SATURDAY, *July* 8, 1876.

The PRESIDENT *pro tempore*. The hour of twelve o'clock having arrived, the legislative and executive business of the Senate is suspended, and the Senate will proceed to the consideration of the articles of impeachment against William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

The PRESIDENT *pro tempore*. The House of Representatives will be notified.

Messrs. LYNDE, McMAHON, JENKS, LAPHAM, and HOAR, of the managers on the part of the House of Representatives, appeared and were conducted to the seats assigned them.

The Secretary read the journal of proceedings of the Senate sitting yesterday for the trial of the impeachment of William W. Belknap.

The respondent appeared with his counsel, Messrs. Blair and Carpenter.

The PRESIDENT *pro tempore*. The managers will proceed with the examination of witnesses.

Mr. Manager McMAHON. We were not through with Adjutant-General Townsend yesterday. If he is present, we should like him to take the stand again.

E. D. TOWNSEND'S examination continued.

By Mr. Manager McMAHON:

Question. I believe the last paper we read yesterday was a letter from John S. Evans, dated at Philadelphia, August 10, 1870. State now whether another copy of a recommendation of him by the officers of Fort Sill accompanied that letter; we seem to have two copies here in these certified copies.

Answer. I think that the other copy, the one which was read yesterday, was transmitted from Fort Sill direct, and that the copy which was not read but which bears, at any rate, many of the same signatures as the first did, was transmitted with Evans's letter from Philadelphia.

Q. Have you that inclosure with you now?

A. I left the papers yesterday with the reporter to put them in the RECORD.

[The papers were handed to the witness.]

Q. I simply want the recommendation of the officers; it is the one that has the date to it, June 23, 1870.

A. I have it in my hand.

Q. Hand it to the Secretary and let him read it.

A. Yes, sir.

The Chief Clerk read as follows:

FORT SILL, INDIAN TERRITORY,
June 23, 1870.

We, the undersigned, officers of this garrison, having confidence in the ability and business integrity of Mr. John S. Evans, trading at this post under existing authority, do respectfully recommend and solicit his appointment as post-trader, under section 22 of the bill for the reorganization of the Army.

ORLANDO H. MOORE,
Captain Sixth Infantry.
J. W. WALSH,
Captain Tenth Cavalry.
ROBERT GRAY,
Captain Tenth Cavalry.
W. F. ROCKWELL,
Brevet Lieutenat-Colonel and Assistant Quartermaster, U. S. A.
JOHN B. VANDE WIELE,
Captain Tenth Cavalry, Brevet Major, U. S. A.
R. H. PRATT,
First Lieutenant Tenth Cavalry, Brevet Captain, U. S. A.
P. L. LEE,
Captain and Brevet Lieutenant-Colonel, U. S. A.
JAMES POWELL, JR.,
Captain Sixth Infantry.
GEO. P. SHERWOOD,
First Lieutenant Sixth United States Infantry, Commanding Company E.
WM. E. DOYLE,
Second Lieutenant Tenth United States Cavalry.
THOS. J. SPENCER,
First Lieutenant Tenth Cavalry, Brevet Captain, U. S. A.
THOS. M. WILLEY,
Lieutenant Sixth Infantry.
W. W. SANDERS,
Captain Sixth Infantry, Brevet Colonel, U. S. A.
GEO. ROBINSON,
Captain Tenth Cavalry.
ORVILLE BURKE,
Captain Tenth Cavalry.
R. H. DAY,
First Lieutenant Sixth Infantry.
WM. H. BECK,
First Lieutenant, R. Q. M., Tenth Cavalry.
A. MACOMB WETHERILL,
Second Lieutenant Sixth Infantry.

Q. (By Mr. Manager McMAHON.) Have you there a letter from John S. Evans accepting the position of post-trader?

A. I have two letters.

Q. State why you have two.

A. One of them is addressed directly to the Secretary of War, who signed the appointment of Evans.

Q. Are there any marks upon that which indicate that it was received by the Secretary of War and from his office transmitted to yours

A. No, sir.

Q. How did that paper get into your office or possession?

A. I am unable to say.

Mr. CARPENTER. What is the date of the letter you speak of, gentlemen?

Mr. Manager McMAHON. Let the Secretary read it.

The WITNESS. I will hand it to the Secretary.

The Chief Clerk read as follows:

FORT SILL, INDIAN TERRITORY,
November 10, 1870.

SIR: I have the honor to acknowledge the receipt of your letter of October 10, 1870, appointing me post-trader at this post under section 22 of act of July 15, 1870. I have the honor to report that I accept the position of post-trader under that act.

I am, sir, very respectfully, your obedient servant,

JOHN S. EVANS.

Hon. WILLIAM W. BELKNAP,
Secretary of War, Washington City, D. C.

Q. (By Mr. Manager McMAHON.) A letter like that being addressed to the Secretary of War would go to him and be opened by him before it came into your office, would it not?

A. That depends upon the address upon the envelope.

Q. What marks are on that indicating that it was received by you, if any, and when it was received by you?

A. The usual office marks are indorsed.

Recd. A. G. O., C. B.—

which means "commission branch," where these letters are filed—

Nov. 25, 1870.

Q. (By Mr. CARPENTER.) November 10 was the date; and when was it filed?

A. Filed in the Adjutant-General's Office November 25, 1870.

Q. (By Mr. McMAHON.) Now pass to the other formal acceptance and give the date of that, and then hand it to the Secretary and let him read it.

Q. It is dated, "Fort Sill, Indian Territory, December 1, 1870."

The Chief Clerk read as follows:

FORT SILL, INDIAN TERRITORY,
December 1, 1870.

To the Adjutant-General United States Army, Washington, D. C.

SIR: I have the honor to state that having been appointed trader at this post by the Secretary of War, that I accept the same.

I am, sir, very respectfully, your obedient servant,

JOHN S. EVANS.

Q. (By Mr. Manager McMAHON.) Do you know how two letters came to be written by Mr. Evans accepting this position?

A. I suppose from the terms of the letter of appointment. The letter of appointment recites the act under which the appointment is made, and is signed by the Secretary of War. The last clause says:

You will please report to the Department, through the Adjutant-General's Office, your acceptance or non-acceptance of this appointment.

Q. Have you any means of knowing whether that first letter which was directed to "Hon. W. W. Belknap" passed through the War Department proper, through his office, before it came into your office?

A. No, sir; I have not.

Q. Have you an order before you of the date of the 14th of January, 1871, communicated through you to the commanding officer at Fort Sill, to remove all the traders from the post except Mr. J. S. Evans?

A. I have.

Q. From where did that order come to you?

A. It came in the handwriting of the Secretary of War, signed with his initials, in an envelope addressed to me.

Q. Please hand it to the Secretary and let him read it.

A. I will.

The Chief Clerk read as follows:

A. G.:

Commanding officer at Fort Sill to be notified to remove all traders from that post except Mr. J. S. Evans, who was appointed by Secretary of War under act July 15, 1870. I understand that Mr. Walker still remains there with stock of goods.

W. W. B.

JANUARY 14, 1871.

Q. (By Mr. Manager McMAHON.) Upon what date did you communicate those instructions to the commanding officer at Fort Sill?

A. Upon the 17th of January, 1871.

Q. Now, before proceeding to any other documentary proof, I will ask you if there is any record in your department of a letter from any person stating that Mr. Walker was still there with his stock of goods?

A. I have a letter from Colonel Grierson, the commanding officer of the post, dated February 26, 1871.

Q. That, however, is subsequent. The order that you have just read was dated the 14th of January, 1871, and the letter of General Grierson is dated February 26, 1871. I speak of a letter prior to the issuing of that order.

A. I find no such letter. Colonel Grierson, in the letter of February 26, acknowledges the receipt of the letter of the 17th of January.

Q. In this connection, hand it to the Secretary and let him read that.

A. Yes, sir.

The Chief Clerk read as follows:

HEADQUARTERS, FORT SILL, INDIAN TERRITORY,
February 26, 1871.

SIR: I have the honor to acknowledge the receipt of communication of January 17, 1871, relative to the removal of all traders from this reservation other than J. S. Evans, who has been appointed by the Secretary of War.

Immediately upon being informed by Mr. Evans that he was prepared to enter upon the duties of trader, Mr. Walker was notified to close his store and remove his stock, &c., from the military reservation without delay. (Copy of letter herewith inclosed.)

Mr. Walker, failing to sell his goods to Mr. Evans, was given a reasonable time to obtain the necessary transportation to remove his property, which arrangement was perfectly satisfactory to Mr. Evans, as he informed me then and since. The goods, buildings, &c., were all removed about the 1st of January.

Very respectfully, your obedient servant,

B. H. GRIERSON,
Colonel Tenth Cavalry, commanding.

To the ADJUTANT-GENERAL, *United States Army,*
Washington, District of Columbia.

Q. (By Mr. Manager McMAHON.) Have you the inclosure that accompanied that letter, being the order of Grierson to those parties?

A. I have that, dated November 20, 1871, addressed to J. C. Dent & Co., traders.

Q. That is another letter, I suspect; look again.

A. Perhaps I can explain why this comes as an inclosure to the letter of General Grierson.

Q. Give any explanation.

Mr. CARPENTER. What is the inclosure?

Mr. Manager McMAHON. The inclosure of a letter that seems to be dated some months afterward. It may be a copy of the paper that he had issued to the other parties.

Mr. CARPENTER. Let me see it.

Mr. Manager McMAHON. We lay no stress on it.

Mr. CARPENTER. Then it goes out.

Mr. Manager McMAHON. The General desires to make an explanation in regard to it. I do not know what it is.

Mr. CARPENTER. There must be a mistake of a year undoubtedly as to the date. It should be 1870 instead of 1871.

The WITNESS. It must be a mistake in the year in the copy.

Q. (By Mr. Manager McMAHON.) Look at your indorsement upon it.

A. Supposing it to be a mistake, the explanation is very clear.

Mr. CARPENTER. The letter inclosed should be 1870.

Mr. Manager McMAHON. I think so. (To the witness.) State whether you have an indorsement on this letter as to the date at which you received it. That is, the letter dated November 20, 1871. Is there not an indorsement "Received in Washington March 13, 1871, and submitted to Secretary of War?"

A. That was an indorsement of the War Department.

Q. (By Mr. Manager McMAHON.) Now read the letter and then read the indorsements on both those letters.

A. This letter of Colonel Grierson of February 26 is marked: "Received at the Adjutant-General's Office March 11, 1871." An indorsement dated March 13, 1871, by the Adjutant-General submits it to the Secretary of War. The War Department stamp shows it to have been received there the same date, March 13, 1871.

Q. How about the inclosed letter or order?

A. At the same time that the appointment was made for the trader signed by the Secretary of War, that letter was addressed to the commanding officer at Fort Sill by the Adjutant-General, in which occur these words:

As soon as Mr. Evans shall be prepared to enter upon the discharge of his duties, you will cause the removal from the military reservation at Fort Sill, Indian Territory, of all traders not holding a letter of appointment from the Secretary of War under said act.

That was the printed form addressed to all commanding officers when appointments were made at posts of post-traders. Supposing, then, the date of the order inclosed in Colonel Grierson's letter to be a mistake for November 20, 1870, this order would be a compliance with the instructions from the Adjutant-General.

Q. Now we will turn back to your order issued under the instructions of the Secretary of War on the 14th of January, 1871; and I ask you whether that was a general order issued to all post-traders or officers commanding at posts, or a special order sent to Fort Sill alone?

A. That particular order referred solely to Fort Sill.

Mr. CARPENTER. What is that order?

Mr. Manager McMAHON. That is the order commanding him to remove all post-traders except John S. Evans.

(To the witness.) Do you know of any similar order having been issued to any other specific post?

A. I do not recall any other; there may have been.

Q. (By Mr. Manager McMAHON.) That question was put to you, was it not, by the Judiciary Committee and called to your attention at that time?

Mr. CARPENTER. That is immaterial.

Mr. Manager McMAHON. It may have refreshed his recollection; that is all.

The WITNESS. I do not remember.

Q. (By Mr. Manager McMAHON.) You have no recollection of any similar order?

A. No, sir.

Mr. Manager McMAHON. Read the letter, Mr. Secretary, addressed to J. C. Dent & Co.

The Chief Clerk read as follows:

HEADQUARTERS FORT SILL, INDIAN TERRITORY,
November 20, 1871.

SIRS: John S. Evans having been appointed post-trader at Fort Sill, Indian Territory, and having notified this office that he is prepared to enter upon the discharge of his duties, you will immediately close your store and as soon as possible remove

your goods from the military reservation, unless you have an appointment from the Secretary of War to trade at this post under the provisions of section 22 of the act of July 15, 1870. No notice of such appointment has been received at this office, and I am directed by instructions from the Secretary of War to cause the removal from the military reserve of all traders not authorized by him.

By order of Colonel B. H. Grierson.

WM. H. BECK,
First Lieutenant, Regimental Quartermaster Tenth Cavalry, Post Adjutant.

J. C. DENT & CO., *Traders.*

Official:
J. WILL MYERS,
Second Lieutenant Tenth Cavalry, Post Adjutant.

Q. (By Mr. Manager McMAHON.) Have you now with you a general order issued from the War Department of the 7th of June, 1871, or circular of instructions defining the status of post-traders?

A. I have.

Q. Please hand that to the Secretary and let it be read.

A. I have the manuscript and also the printed copy in this document.

Q. In whose handwriting is the manuscript?

A. My impression is that it is in the handwriting of Mr. H. T. Crosby, who was a clerk in the War Department. It is signed by the Secretary of War.

Mr. Manager McMAHON. Read it, Mr. Secretary.

The Chief Clerk read as follows:

WAR DEPARTMENT,
Washington City, June 7, 1871.

Let the following be issued as a circular of instructions defining the status of post-traders, a copy to each commanding officer and trader.

Post-traders appointed under the authority given by the act of July 15, 1870, will be furnished with a letter of appointment from the Secretary of War, indicating the post to which they are appointed.

They are not subject to the rules prescribed in article 25, or paragraphs 196 and 197 Army Regulations, 1863, in regard to sutlers, that office having been abolished by law.

No tax or burden in any shape will be imposed upon them, nor will they be allowed the privilege of the pay table.

They will be permitted to erect buildings for the purpose of carrying on their business, upon such part of the military reservation or post to which they may be assigned as the commanding officer may direct, such buildings to be within convenient reach of the garrison.

They will be allowed the exclusive privilege of trade upon the military reserve to which they are appointed, and no other person will be allowed to trade, peddle, or sell goods, by sample or otherwise, within the limits of the reserve.

They are under military protection and control as camp-followers.

Commanding officers will report to the War Department any breach of military regulation or any misconduct on the part of traders.

All previous instructions in regard to post-traders are hereby revoked.

WM. W. BELKNAP,
Secretary of War.

Q. (By Mr. Manager McMAHON.) Look at the book I hand you, and see if the sections marked are the two sections of the Articles of War alluded to in that order?

A. [Examining book.] Those are the sections.

Mr. Manager McMAHON. Mr. Secretary, please read those two sections.

Mr. CARPENTER. Are they sections of the Statutes?

Mr. Manager McMAHON. They are sections of the Army Regulations.

The Chief Clerk read as follows:

196. The post council shall prescribe the quantity and kind of clothing, small equipments, and soldiers' necessaries, groceries, and all articles which the sutlers may be required to keep on hand; examine the sutler's books and papers, and fix the tariff of prices of the said goods or commodities; inspect the sutler's weights and measures; fix the laundress's charges, and make regulations for the post school.

197. Pursuant to the thirtieth article of war commanding officers reviewing the proceedings of the council of administration will scrutinize the tariff of prices proposed by them, and take care that the stores actually furnished by the sutler correspond to the quality prescribed.

Q. (By Mr. Manager McMAHON.) General, I will ask you whether the effect of this circular of instructions was to prevent the council of administration or any person from interfering with the prices that sutlers or post-traders might charge?

Mr. CARPENTER. That will not do. It is self-evident on its face.

Mr. Manager McMAHON. We withdraw the question. (To the witness.) After the repeal of these two sections, 196 and 197, were there any other statutes or articles of war that permitted the prices which a trader might charge to be regulated by any person except himself?

Mr. CARPENTER. That will not do.

Mr. Manager McMAHON. I ask if there were any other regulations. That is proper.

Mr. CARPENTER. You call upon the witness to construe the regulations. It is manifest that you cannot ask the witness to construe a statute which you hand to him. You cannot ask him if there is any statute which has such an effect.

Mr. Manager McMAHON. The point we desire to get before the Senate is this: We do not ask a construction of sections 196 and 197, but we ask the Adjutant-General as a matter of fact whether, if these articles are repealed, there are any other articles of war or statutes—we do not care about the statutes, but any other articles of war—which impose any restraint whatever upon a post-trader in regard to the prices he may charge for goods.

Mr. BLAIR. It is obviously a question of law.

Mr. CARPENTER. If you called the Judge Advocate-General, you would get nearer to it; but I should object to it then. The Army regulations are statutes themselves.

Mr. Manager McMAHON. We withdraw the question. (To the witness.) See whether you have a correspondence that passed in part through the Department of Justice in regard to charges against John S. Evans which were submitted to the Secretary of War; and, if so, give us that entire correspondence.

A. I have a letter dated October 28, 1871, from the Solicitor of the Treasury, transmitting copies of papers charging Evans & Co. and other parties with introducing spirituous liquors in the Indian country.

Mr. Manager McMAHON. Please hand it to the Secretary, and he will read it in detail.

Mr. CARPENTER. Let me ask what is the object of offering this letter?

Mr. Manager McMAHON. It contains certain facts.

Mr. CARPENTER. The letter is no evidence of facts, and there is nothing in the articles about whisky regulations.

Mr. Manager McMAHON. It is a letter which was submitted to the Secretary of War, upon which he wrote a letter, which we have here as well.

Mr. Manager JENKS. It is introductory to the next letter.

Mr. CARPENTER. Then let us hear the next letter first.

Mr. Manager McMAHON. If you come over here, we will show it to you. [Handing a letter to the counsel.]

Mr. CARPENTER, [examining the letter.] I object to all that proof. It does not go, so far as I can ascertain, to sustain any charge made in these articles at all, nor is it evidence of anything necessary for them to prove so far as I can see. They certainly do not state any reason why this should be received. One of the managers says he wants to prove by it that Evans was there acting as post-trader and that Belknap knew it. As they have shown the fact that Belknap appointed him, it is pretty good evidence that he knew that Evans was appointed. There is no question made here that Belknap did not know that he was the post-trader there; not the slightest.

Mr. Manager McMAHON. Mr. President and Senators, the letters which we now offer by way of introduction to subsequent letters are letters which make certain specific charges against the post-trader, John S. Evans. The theory of this prosecution is, and up to this point tolerably well sustained, that John S. Evans was appointed through the influence of Caleb P. Marsh and in pursuance of a corrupt bargain between them, the profits of which were equally divided between Marsh and the Secretary of War. That the Secretary of War did actually and personally receive his share of the fruits of this arrangement, no man who has any regard for testimony can doubt. The great question for this tribunal is whether he received it knowingly, under such circumstances that any officer of honesty and integrity ought to have known where this money was coming from.

The particular point, therefore, to be investigated is the conduct of the Secretary of War. Whenever this particular post-trader is affected, from whom he is receiving his gains, the particular point is to discover how the Secretary of War acts. What he may say is very direct and positive testimony, but it is not any more direct and positive than what he may do. The gentleman says that they have admitted that the Secretary of War knew that John S. Evans was post-trader at this point—a very extraordinary admission to make!

Mr. CARPENTER. No, I did not admit it; you proved it without objection.

Mr. Manager McMAHON. If we have proved it by one witness, there is no law against our proving it by another. If we have proved it in a manner which does not bring conviction home to the gentleman, it ought to satisfy him that we may introduce the letter of the Secretary of War.

Mr. CARPENTER. You have proved by the only testimony which can prove it, to wit, the record of his appointment, that he was appointed. After you have proved the record of a judgment in a court of record, you cannot call witnesses to prove that the judgment was rendered, because that is cumulative. You have introduced conclusive evidence, and I have said to you that we do not deny it; we make no point upon it. Of course the Secretary knew that Evans was post-trader.

Mr. Manager McMAHON. We have introduced conclusive evidence that John S. Evans was in fact the post-trader, but whether the Secretary of War had forgotten the fact in the multitude of his different appointments is another important fact in this case which we propose to show had not occurred; that he had not forgotten that John S. Evans was the post-trader, but on the contrary that he was receiving testimony as to John S. Evans's good character, supporting and sustaining John S. Evans all along. Then if the gentlemen desire to see the full force of what we claim from it, we propose to show that when the New York Tribune article was published statements were therein made in regard to this particular matter and its status exactly given. Then we come to the order to which the gentleman has alluded so frequently as a triumphant vindication of his client. The order exculpating his client, by some singular and extraordinary coincidence, bound to it every other post-trader in the country except John S. Evans, and did not affect Caleb P. Marsh in the slightest degree in the relations between Marsh and Evans, except, as we shall prove hereafter, that the amount of contribution paid by Marsh to Evans was diminished by one-half, and the amount, of course, that went to the Secretary of War was correspondingly diminished, and that was by reason of allowing a council of administration to fix the prices.

Now, I think that this testimony is clearly competent in every view which can be taken of it.

Mr. BLAIR. I propose to ask the gentleman whether in point of fact, and speaking candidly as a gentleman occupying his position before the Senate ought to speak, his only object in introducing this paper is to show that John S. Evans was at that time the post-trader?

Mr. Manager McMAHON. A sufficient answer to that is, that if it is competent for that purpose, it is competent; but I will go further, and say that I want to show not only that Mr. Belknap knew he was the post-trader, but that he made inquiries into his business standing and fixed his status in his mind as a good business man; and I suppose he had good reason, from his stand-point, to think so.

Mr. BLAIR. Then, Mr. President, the gentleman now says it is admitted that the ostensible object for which he offers this proof is not his real object at all; that he has some ulterior object in offering this proof which he has not the candor to state to this court.

Mr. Manager McMAHON. I deny the imputation; it is not true; but I do not mean to be rude about it.

Mr. BLAIR. Mr. President, the gentleman has not stated any other object. He gets up here and tells the Senate that his object in offering this proof is to show that it was known to the Secretary of War that John S. Evans was the trader at Fort Sill, a fact that is not denied, a fact that is proved by other testimony, which is not a matter at all that we contemplate denying or controverting. This is the only object which he has assigned to this body as a motive for introducing this paper. We say that until something legitimate in reference to the issues here before this body is assigned for introducing this evidence, it is wholly immaterial and irrelevant to the issue before the body; and we hope it will be excluded until some reason is given for its introduction.

Mr. KERNAN. The manager will please tell us from whom the letter is which he now offers and who answers it. We do not understand it here.

Mr. Manager McMAHON. The letters are addressed by the regular United States authorities in the Indian Territory to the Department of Justice, and are communicated to the Secretary of War and by him answered.

I want to put this question to the honorable counsel: Do you contend that in view of the issue joined between us in this case the conduct of the Secretary of War to John S. Evans and everything that throws light upon their dealings with each other is not competent in this case?

Mr. BLAIR. If the gentleman means to state to this body that his object is to show by this paper that the Secretary of War did in any way by his conduct in that matter show favor to John S. Evans, and that this is proof material to the issue, then let him say so, and we shall prepare to controvert that subject and show that it is not material in that aspect; but the whole body will see that that is not the avowal of the gentleman at all. He gets up here and asks the introduction of a paper as evidence to prove a fact utterly without any consequence at all, and keeps in reservation the real object that he has in view. I say that is not the proper way to conduct this case, and I think the Senate, as well as the parties here, have a right to have candid and fair and round dealing. The gentleman has not yet explained the object which we asked him to give us clearly and precisely when he rose and presented the paper. Let him do so, and then we shall see whether it is legitimate in that aspect of the case.

The PRESIDENT *pro tempore*. The Chair will submit the question to the Senate. Shall these letters be admitted?

The question was determined in the affirmative.

The PRESIDENT *pro tempore*. The managers will proceed.

Mr. Manager McMAHON, (to the witness.) General, refer to the letter of October 28, 1871; state what it is and then hand it to the Secretary, if you please, to be read.

Mr. CARPENTER. Tell us whose letter it is.

Mr. Manager McMAHON. It is a letter to E. C. Banfield, Solicitor of the Treasury.

The WITNESS. It is a letter sent to the Adjutant-General's Office for file, signed E. C. Banfield, Solicitor of the Treasury, addressed to Hon. W. W. Belknap, Secretary of War, and dated "Department of Justice, Office of the Solicitor of the Treasury, Washington, District of Columbia, October 28, 1871," with two inclosures dated "Clerk's office, United States court for the western district of Arkansas, Fort Smith, Arkansas, October 18, 1871, to Hon. E. C. Banfield, Solicitor of the Treasury," and signed by "J. H. Huckleberry, United States attorney." Another inclosure of the same date, to "Hon. E. C. Banfield, Solicitor of the Treasury," is also signed by "J. H. Huckleberry, United States attorney." Both inclosures purport by the signatures to be copies.

Q. (By Mr. CARPENTER.) Do you know anything about whose handwriting they are in?

A. No, sir.

Mr. CARPENTER. I object to the papers on that ground.

Q. (By Mr. Manager McMAHON.) Do they purport to be official copies sent to the Secretary of War and submitted to him?

A. Yes, sir; the two inclosures purport to be copies, and there is what seems to be an original letter from the Solicitor of the Treasury to the Secretary of War.

Q. State whether these papers were delivered to the Secretary of War, considered by him, and letters addressed by him in answer to the complaints therein made.

A. I can only judge by the marks on the papers and by copies of letters which were sent to my office for file in connection with the subject. I have no personal knowledge of the matter.

Q. Have you a letter there from the Secretary of War, signed by him personally, in regard to these matters; and have you also a letter there addressed by the Secretary of War, in consequence of these letters, to J. S. Evans, post-trader at Fort Sill?

A. I do not know that I understand the first question.

Q. The first question is whether these letters were not submitted to the Secretary of War and responded to by him in a subsequent letter.

A. That I have replied to; but I refer to the question just previous to the last one.

Q. Well, did he reply to these letters? And, if so, give us the dates.

A. [Producing papers.] I have copies of letters which were sent to me for file.

Q. Of what date?

A. This copy says "Nov. 18, 1871, to Col. B. H. Grierson, commanding Fort Sill."

Q. One moment. That may not be the one. There is one to the Solicitor of the Treasury November 8, 1871.

A. I have two to the Solicitor of the Treasury, one dated November 2, 1871, and the other November 8, 1871.

Q. Signed by the Secretary of War?

A. These are copies signed with his initials. I do not mean to say that they are signed by his own initials, but signed as copies with his initials attached.

Q. But they are official copies filed in your office?

Mr. CARPENTER. What does the witness understand by "official copies?" Would he call any copy filed in the office an official copy?

Mr. Manager McMAHON, (to the witness.) State what you call an official copy there.

Mr. CARPENTER. He has not called it an official copy.

Q. (By Mr. Manager McMAHON.) Take the letter of November 8, 1871.

A. The letter of November 8, 1871, is dated "War Department"——

Q. Let me see the paper itself. [Examining letter.] That was the paper that was filed in your office?

A. Yes, sir.

Q. Whose handwriting is that paper in?

A. I do not recognize the handwriting.

Q. How did it come into your office and from whom?

A. If I had the other papers, I could tell. [Mr. CARPENTER handed the papers to witness.] They came at the same time that the papers from Mr. Banfield came and were inclosed with them, having the same office-mark.

Q. Being the complete correspondence upon that subject?

A. Yes, sir.

Q. Were they filed by you, and have they been filed and kept by you as copies of the correspondence and the record?

A. They have been.

Q. That letter of General Belknap you will find refers at the beginning "In further response to your letter of the 28th ultimo." That seems to be in reply, does it not, to the letter of the Solicitor of the Treasury dated October 28, 1871?

A. It does.

Mr. Manager McMAHON. We now offer all these papers in evidence.

Mr. CARPENTER. The court has already ruled them in. I do not suppose we could prevent it now.

Mr. Manager McMAHON. Let them be read.

Mr. CARPENTER. Yes, let them all be read.

The Chief Clerk read the papers received in evidence, as follows:

DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR OF THE TREASURY,
Washington, D. C., October 28, 1871.

SIR: I herewith transmit copies of letters received at this office from J. H. Huckleberry, United States attorney, western district of Arkansas, charging Evans & Co. and other parties with introducing spirituous liquors, wines, and ale into the Indian country.

Please inform me whether the parties referred to in these letters have been authorized by your department to introduce liquor into the Indian country as contemplated in section 1, act of March 15, 1864. (13 Statutes, page 29.)

In view of the numerous complaints made in relation to this matter, permit me to call your attention to the power vested by this act in a commanding officer of a military post in relation to the seizure of spirituous liquors or wines unlawfully introduced into the Indian country.

I am, very respectfully,

E. C. BANFIELD,
Solicitor of the Treasury.

Hon. W. W. BELKNAP,
Secretary of War.

Mr. Manager McMAHON. Now read the inclosure of October 18, 1871.

The Chief Clerk read as follows:

CLERK'S OFFICE, UNITED STATES COURT
FOR WESTERN DISTRICT OF ARKANSAS,
Fort Smith, Arkansas, October 18, 1871.

SIR: What right has Evans & Co., at Fort Sill, to introduce wine and ale into the Indian country? I am informed by reliable authority that some fifty thousand dollars' worth of this kind of spirituous liquors were introduced by the said firm, they claiming that they had permission to introduce the said spirituous liquors. If

they are authorized to introduce the same, please furnish me with a copy of their permit, in order to see whether or not the same has been violated in any particular.

Very respectfully,

J. H. HUCKLEBERRY,
United States Attorney.

Hon. E. C. BANFIELD,
Solicitor of the Treasury.

Mr. WRIGHT. Mr. President, may I be allowed to submit an inquiry to the managers and also to the counsel as to whether there is any necessity that these papers shall all be read, and whether it would not be sufficient that they be handed to the reporter without reading them at this time?

Mr. Manager McMAHON. We have no objection to that being done.

Mr. CARPENTER. I do not understand that it would be a proper way to try the case to proceed without reading the testimony. The only chance we have got to compel anybody to listen to it is to have it read on the trial.

Mr. WRIGHT. My inquiry was this: when it is agreed that a paper is admissible in evidence, if it may not be regarded as read without taking up the time in reading it. Of course any question as to the admissibility of a paper can be raised.

Mr. CARPENTER. If the managers will concede the corresponding presumption that the papers do not do us any harm, we shall not have any objection; but if they claim that these papers are injurious to us, we want to have them read for the purpose of letting the Senate see right on the spot that they are not. No lawyer would try a case in a court of record in such a way as that. We have not seen these papers; we do not know what they are. We want to hear them as we go on for the purpose of cross-examining the witness on them if necessary.

Mr. WRIGHT. Of course I understand the counsel have that right; but I suggest whether we might not save time by dispensing with their reading.

Mr. CARPENTER. Undoubtedly it would save time; but it would not save our rights. We may cross-examine or else not having heard these papers let the witness leave the stand, and then they might slide in a bushel of papers. That would not be a proper way to conduct the case.

The PRESIDENT *pro tempore*. The managers will proceed.

Mr. Manager McMAHON. Mr. Secretary, you will read the second letter of October 18, 1871.

The Chief Clerk read as follows:

CLERKS' OFFICE, UNITED STATES COURT
FOR WESTERN DISTRICT OF ARKANSAS,
Fort Smith, Arkansas, October 18, 1871.

SIR: Frequent complaints are made of late in reference to spirituous liquors being introduced into the Indian country by the Missouri, Kansas and Texas Railroad. Now, have they received any authority to introduce said liquors, and, if so, under what regulations? Second. Certain white men claim the right of furnishing goods to their men on that railroad without a license from agent (subagent) of Indian affairs. Have they that right, and, if not, what advice would you give? And also if the railroad has not permission to introduce spirituous liquors, would you advise that the same be seized and an information filed against them? Please answer the above questions as soon as possible.

Very truly,

J. H. HUCKLEBERRY,
United States Attorney.

Hon. E. C. BANFIELD,
Solicitor of the Treasury.

Mr. Manager McMAHON. Now let the Secretary read the two letters of General Belknap, the first dated November 2, 1871, to the Solicitor of the Treasury, and the second dated November 8, 1871.

The Chief Clerk read as follows:

WAR DEPARTMENT,
Washington City, November 2, 1871.

SIR: I have the honor to reply to your letter of the 28th ultimo on the subject of the illegal introduction of spirituous liquors, &c., into the Indian country by Evans & Co., and other parties, that previous to the 28th ultimo, on which date Evans, post-trader at Fort Sill, was authorized to take to that post monthly ten gallons of brandy and ten gallons of whisky for the use of the officers there, no permit had been given him or the other parties referred to to introduce any liquors into that country.

Very respectfully, &c.,

W. W. B.,
Secretary of War.

The SOLICITOR of the *Treasury Department.*

WAR DEPARTMENT, *November* 8, 1871.

SIR: In further response to your letter of the 28th ultimo on the subject of the alleged illegal introduction of liquors, &c., into the Indian country by certain persons, among others Evans & Co., of Fort Sill, I have the honor to inform you that Mr. John S. Evans, post-trader at Fort Sill, through his friends, denies having taken liquor into the Indian country without authority. Mr. Evans was appointed to the post-tradership on October 10, 1870, and holds it in his own name and not in that of Evans & Co., and no complaint has ever been made against him by the military authorities at Fort Sill, he having been regarded a good and law-abiding business man.

I therefore request that no proceedings be commenced against him without a thorough investigation of the charges that he has been engaged in such practices shows they were well founded.

Very respectfully, &c.,

W. W. BELKNAP,
Secretary of War.

To the SOLICITOR *of the Treasury.*

Q. (By Mr. Manager McMAHON.) How long does it take a letter to go from the city of Washington to Fort Sill?

A. I think about seven days. I am not quite sure about the time.

Q. About how long does it take a person to travel?

A. About that same time.

Q. Was it possible to have received any communication by the Secretary of War from Fort Sill between the 28th of October and the 8th day of November?

A. It might have been received by telegraph.

Q. Are any such telegrams on record in the office?

A. Not in my possession.

Q. Did you make search for all the official documents relating to the Fort Sill matter on the request of the Judiciary Committee of the House of Representatives?

A. Yes, sir; I did.

Q. Did you find any letters on file or any statements from any friends of J. S. Evans & Co. in regard to the introduction of liquors at Fort Sill, or any of those charges that were made in this matter? Did you find any letters, or statements, or telegrams on file?

A. No, sir.

Q. Now have you a letter of the date of 2d of November, 1871, signed by the Secretary of War and directed to John S. Evans? And, if so, hand that to the Secretary to be read.

A. I have no such letter.

Q. We have a copy of it. You had better look through your papers.

Mr. CARPENTER. We will loan you our copy.

Mr. Manager McMAHON. You have a copy? I thought you said a while ago you had not these letters that we were introducing.

Mr. CARPENTER. O, no.

Mr. Manager McMAHON. Yes, you did. You forget yourself.

Mr. CARPENTER. No, I do not forget myself. The general proposition was made by the Senator from Iowa, that we should consider all these papers and letters as read. This particular letter I happen to have a copy of.

Mr. Manager McMAHON. You had the Banfield letters.

Mr. CARPENTER. The proposition was not to admit the Banfield letters, but all letters and documents.

Q. (By Mr. Manager McMAHON.) Have you found that letter?

A. I have not. It may have been filed in the Department, and not in my possession.

Q. You furnished us with a certified copy and gentlemen on the other side also have one. Look over this copy and see where it may have come from.

A. (Examining.) It has evidently been furnished from the Adjutant-General's Office. I do not know why it is not among the papers I have.

Mr. Manager McMAHON. We will read the certified copy. That is evidence in itself. I send it to the Secretary to be read.

The Chief Clerk read as follows:

WAR DEPARTMENT,
Washington City, November 2, 1871.

SIR: The attention of this Department having been called to the fact that spirituous liquors have been taken into the Indian country without the authority of this Department and against the express prohibition of law by certain parties, I have the honor to request that you will inform me whether your firm has carried liquors into that country to the value of $50,000 or any less sum previous to October 30, 1871; and, if so, by what authority they were introduced there.

Very respectfully, your obedient servant,

WM. W. BELKNAP,
Secretary of War.

J. S. EVANS, Esq.,
Post-Trader, Fort Sill, Indian Territory.

Mr. Manager McMAHON. We have already offered in evidence, I believe, the letter to Colonel Grierson at Fort Sill, dated the 17th day of February, 1872.

The WITNESS. I have that letter, but I have not testified to it.

Mr. Manager McMAHON. But it has been put in evidence, I believe. We will offer in this connection at any rate (for we have not the RECORD here to show it) the letter of the Secretary of War, of date February 17, 1872, addressed to General Grierson, commanding officer at Fort Sill. It need not be read, as I am sure it is in the RECORD, but we want the reply of General Grierson to that letter. Give us the date of that letter and state what it is.

The WITNESS. It is dated "Headquarters, Fort Sill, Indian Territory, February 28, 1872," addressed to "Adjutant-General United States Army, Washington, D. C.," and it begins:

SIR: I have the honor to acknowledge the receipt of your letter dated February 17, 1872, relative to the post-trader at this post.

It is signed "B. H. Grierson."

Q. (By Mr. Manager McMAHON.) That is not the whole of it?

A. No, sir.

Q. Let the Secretary read the whole letter.

The Chief Clerk read as follows:

HEADQUARTERS, FORT SILL, INDIAN TERRITORY,
February 28, 1872.

ADJUTANT-GENERAL, UNITED STATES ARMY,
Washington, D. C.

SIR: I have the honor to acknowledge the receipt of your letter dated February 17, 1872, relative to the post-trader at this post.

I understand J. S. Evans's character as a business man is good, and he has heretofore given general satisfaction; but Mr. Evans is absent, and has been for some months, and has associated with him J. J. Fisher, now also absent, who has had control of the establishment and who claims to have the greater pecuniary interest in the business, (the business being conducted, however, under the name of J. S. Evans.) Repeated complaints have been made to me of the exorbitant prices at which goods were sold by them, and when I have represented the matter to the firm they replied that they were obliged to pay $12,000 yearly (to a Mr. Marsh, of New York City, who they represent was first appointed post-trader by the Secretary of

War) for their permit to trade, and necessarily had to charge high prices for their goods on that account. I have repeatedly urged them to represent this matter in writing to me, in order that I might lay the matter before the proper authority to relieve the command of this burden, upon whom it evidently falls; but they declined to do so, stating that they feared their permit to trade would be taken from them.

As the prices could not be regulated by a council of administration, the trader not being a sutler, it has been contemplated by some of the officers of the garrison to represent this matter, without reference to J. S. Evans, through the proper military channels, but as it was claimed that the authority for the tradership emanated from the Secretary of War it was feared that that course might be construed as taking exception to the action of superior authority.

The prices are considerably higher since his appointment by the Secretary of War than previously, and he has undoubtedly taken advantage of his position as sole trader in charging these exorbitant prices, giving the reasons above quoted, stating that he could not, under the circumstances, sell goods at lower prices.

It has also been reported to me that he charges enlisted men greater prices for the same articles than he does officers, and, at all events, it is very evident that the officers and men of this garrison have to pay most of the $12,000 yearly, referred to above, they being the consumers of the largest portion of the stores.

I feel that a great wrong has been done to this command in being obliged to pay this enormous amount of money under *any* circumstances, the largest portion of which, at least, has been taken from the officers and enlisted men of this post, nearly *all* the money of the latter mentioned going to the trader. The responsible party for this great injustice should be *held* responsible and be obliged to refund the money.

If J. S. Evans has *not* paid this exorbitant price for permission to trade, as stated by him, his goods should be seized and sold for the benefit of the post fund.

In order to insure a healthy competition, to reduce the price of goods, and to relieve the officers and soldiers of this garrison from this imposition, I recommend that at least three (3) traders be appointed, and that those appointments be made upon the recommendation of the officers of the post; that each trader be *known* to be interested only in his own house, and that they be obliged to keep such articles as are required for the use of officers and enlisted men of the Army, and to sell them at moderate prices.

The trader complies with circular of A. G. O. issued June 7, 1871, as far as I am aware.

The buildings, (store, &c.) however, are not convenient to the present garrison, having been built at the time when the command was in camp.

Very respectfully, your obedient servant,

B. H. GRIERSON,
Colonel Tenth Cavalry, Commanding.

Q. (By Mr. Manager McMAHON.) Did that letter pass into the hnads of the Secretary of War?

A. It first came to the Adjutant-General; on the 9th of March, 1872, was recorded in the Adjutant-General's Office.

Q. Look at the marks and see whether it passed into the hands of the Secretary of War.

A. It was submitted to the Secretary of War by indorsement of 11th March, 1872.

Q. State whether in pursuance of that letter of General Grierson the Secretary of War took any action, and what that action was.

A. I know of no reason why a circular of March 25, 1872, in relation to post-traders was issued, unless it was in consequence of that letter of Colonel Grierson; but I have no positive information on that point.

Q. I ask you whether you remember the fact, independent of what you have heard, that General Hazen had also testified to certain facts before the Military Committee three days prior to the order of March 25.

A. I do not know anything about that.

Mr. CARPENTER. Allow him in that connection to explain the whole subject, from the letter to which this is a reply and the letter from the Secretary of War showing that as soon as he gets notice of that thing he writes to Grierson for the facts; Grierson writes back; the letter gets here on the 9th of March, and this order, correcting the whole subject, is issued.

Mr. Manager HOAR. We do not know of any order correcting the whole subject.

Mr. CARPENTER. One side of a correspondence does not show the matter fully.

Q. (By Mr. Manager McMAHON.) What the gentleman calls for, I understand, is some letter of the Secretary of War to you in response to the submission to you of this letter.

A. I hold in my hand a copy of a letter which is designated as the letter of February 17, 1872.

Mr. Manager McMAHON. That is the letter which we gave them and they waived the reading of.

The WITNESS. My letter to the commanding officer at Fort Sill is dated 19th February.

Mr. Manager McMAHON. It was read in connection with the Tribune article. We have no objection to its going in again.

Mr. CARPENTER. If it is in once, that is enough. I do not understand that it is.

Mr. Manager HOAR. It has been read already by Mr. LYNDE in the opening in that connection.

Mr. Manager LAPHAM. It has been put in evidence since.

Q. (By Mr. Manager McMAHON.) The order that we are referring to now in this connection is the order of the 25th of March, 1872, as to which you say that you know no reason why it should not have been based upon the letter of General Grierson. Now I will ask you whether any action was taken, to your knowledge, by the Secretary of War to correct the payment of a tribute by Evans to Marsh?

A. I know nothing about any payment whatever of that sort.

Q. Do the records of your Department show any inquiry into the matter as to whether Evans was paying the tribute?

Mr. CARPENTER. That we object to. You had better bring the records.

Mr. Manager McMAHON. He has a right to answer. He has inspected them. Do you make objection?

Mr. CARPENTER. No.

Mr. Manager McMAHON. Very well. (To the witness.) I understand you to say that you had examined the records for all the papers relating to the Fort Sill matter?

A. Yes, sir.

Q. (By Mr. Manager McMAHON.) Did you find any order for an investigation into the fact that Evans was paying Marsh $12,000 a year for the privilege of being the post-trader at that post?

Mr. CARPENTER. That question I object to.

Mr. Manager McMAHON. Well, let us have the reason.

Mr. CARPENTER. The reason is that the witness himself says he knows nothing about that subject. He has not found anything, would not know what to look for, would not know when he found something whether it referred to it or not, for he knows nothing about the subject.

Mr. Manager McMAHON. Mr. President, it seems to me a very peculiar point indeed that we should be compelled to put in the entire records of the War Department and have each individual Senator or the counsel go over those records for the purpose of investigating whether these were all the papers that are there. I do not understand that to be the law at all.

Mr. CARPENTER. If that is what you ask, we withdraw the objection.

Mr. Manager McMAHON. All right. (To the witness.) Now, General, I will renew the question whether after having made search for all the papers relating to Fort Sill you find any order or any communication in any way bearing upon the correction of this payment of a subsidy of $12,000 by Evans to Marsh in New York?

A. No, sir.

Q. (By Mr. Manager McMAHON.) Nothing of that sort?

A. Nothing.

Q. (By Mr. CARPENTER.) Nor of the subsidy itself?

A. Nor of the subsidy itself.

Q. (By Mr. Manager McMAHON.) Is there any other order in the War Department that was issued upon the basis of this Grierson letter except the order of the 25th of March, 1872?

A. I think that question goes a little further than my testimony. I have no positive knowledge of what the basis of this circular was. The papers of the post-trader business are confided to my office for custody. The transactions are seldom between the Adjutant-General and the post-trader, except so far as they relate to the military relations of the trader to the post. Therefore I am not able to say anything about that Grierson letter being the basis of any instructions.

Q. The question I ask is, is there any other order upon this question of post-tradership except this order of March 25, 1872?

Mr. CARPENTER. He read another one himself yesterday.

Mr. Manager McMAHON. Not after the Grierson letter. That was in June, 1871. The Grierson letter is March, 1872.

The WITNESS. Do you mean subsequent to the letter?

Q. (By Mr. Manager McMAHON.) Subsequent to the receipt of the Grierson letter, in March, 1872.

A. There is a circular dated June 7, 1875, which confirms, with one slight alteration, the circular of March 25, 1872, and a former circular of June 7, 1871.

Mr. Manager McMAHON. Just let the Secretary read it. We want all the orders on the question.

The Chief Clerk read as follows:

[Circular.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE.
Washington, June 7, 1875.

The following instructions, defining the status and for the government of post-traders, are promulgated for the guidance of all concerned:

I. Post-traders appointed under the authority given by the act of July 15, 1870, will be furnished with a letter of appointment from the Secretary of War, indicating the post to which they are appointed.

II. They are not subject to the rules prescribed in article 25, or paragraphs 196 and 197, Army Regulations, 1863, in regard to sutlers, that office having been abolished by law.

III. They will be permitted to erect buildings for the purpose of carrying on their business, upon such part of the military reservation or post to which they may be assigned as the commanding officer may direct, such buildings to be within convenient reach of the garrison.

IV. They will be allowed the exclusive privilege of trade upon the military reserve to which they are appointed, and no other person will be allowed to trade, peddle, or sell goods, by sample or otherwise, within the limits of the reserve. This paragraph, however, is not intended to prohibit the sale by producers of fresh fruits and vegetables, by permission of the post-commander.

V. They are under military protection and control as camp-followers.

VI. The council of administration at a post where there is a post-trader will, from time to time, examine the post-trader's goods and invoices, or bills of sale; and will, subject to the approval of the post-commander, establish the rates and prices (which should be fair and reasonable) at which the goods shall be sold. A copy of the list thus established will be kept posted in the trader's store. Should the post-trader feel himself aggrieved by the action of the council of administration, he may appeal therefrom through the post-commander to the War Department.

VII. In determining the rate of profit to be allowed, the council will consider not only the prime cost, freight, and other charges, but also the fact that while the trader pays no tax or contribution of any kind to the post fund for his exclusive privileges he has no lien on the soldiers' pay, and is without the security in this respect once enjoyed by the sutlers of the Army.

VIII. Post-traders will actually carry on the business themselves, and will habitually reside at the station to which they are appointed. They will not farm out, sublet, transfer, sell, or assign the business to others.'

IX. Post-commanders will report to the War Department any misconduct, breach of military regulations, or failure to fulfill the requirements of this circular on the part of traders.

X. All previous instructions in regard to post-traders not in conformity with the terms of this circular are hereby revoked.

By order of the Secretary of War:

E. D. TOWNSEND,
Adjutant-General.

The WITNESS. There is also a general order dated "War Department, Adjutant-General's Office, Washington, D. C., October 12, 1872," promulgating for the information and guidance of all concerned a letter from the Department of Justice dated Washington, October 3, 1872, to Hon. William W. Belknap, Secretary of War, giving an opinion on certain questions relating to post-traders which had been propounded to him.

Mr. Manager McMAHON. Let it be given to the Secretary. We want them all in. It need not be read unless the gentlemen on the other side desire it.

Mr. CARPENTER. We have not seen it. We have no copy.

Mr. Manager LYNDE. It merely relates to the right of post-traders to remove buildings.

Mr. CARPENTER. If you do not want it in, we do not.

Mr. Manager McMAHON. We want it in the record.

Mr. CARPENTER. If it goes in the record, let it be read.

The Chief Clerk read as follows:

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, October 12, 1872.

General Orders No. 89.

The opinion of the Acting Attorney-General upon the following questions is published for the information and guidance of all concerned:

"DEPARTMENT OF JUSTICE,
"*Washington, October* 3, 1872.

"SIR: I have duly considered the questions which you ask the Attorney-General in your letter of the 11th instant, and which are as follows:

"'Where persons such as post-traders, contractors, and others have been allowed by proper authority to erect buildings to facilitate their business upon a military reserve, with no restriction as to the term during which they shall be allowed to remain—

"1. Are such buildings, after the removal of the trader, contractor, or other person from the reserve, still his personal estate, and as such has he the right to dispose of them by rent, lease, or sale to other persons?

"2. Does not such property become part of the realty after the appointment of a trader is revoked or a contractor has fulfilled his contract, or any event happens which dissolves their business connection with the reserve?

"By the order of the Secretary of War of June 17, 1871, (a copy of which you inclose to me,) it is provided that 'post-traders appointed under the authority given by the act of July 15, 1870, will be furnished with a letter of appointment from the Secretary of War, indicating the post to which they are appointed.'

"They will be permitted to erect buildings for the purpose of carrying on their business upon such part of the military reservation or post to which they may be assigned as the commanding officer may direct, such buildings to be within convenient reach of the garrison.

"They will be allowed the exclusive privilege of trade upon the military reserve to which they are appointed, and no other person will be allowed to trade, peddle, or sell goods by sample, or otherwise, within the limits of the reserve.

"They are under military protection and control as camp-followers.

"Buildings erected by post-traders on a military reserve, in conformity to this order, are erected for the mutual benefit of the Government and the trader, and are not to be regarded as buildings would be erected by trespassers, or even by tenants under leases, in which no provision is made therefor; but they are erected under a license from the Government and for the mutual benefit of both parties. Under these circumstances I am of opinion that by the proper construction of the license these buildings were not intended to become a part of the realty after their erection; but were to continue the property of the traders, and, lest therefore when a trader is removed from his post, I have no doubt that he has a right to remove the building from the place where it was erected; and that when removed he can dispose of the materials as his own property. But it is very clear that the license to erect such buildings is a purely personal one, and is granted for one purpose only. Therefore, under such licenses, the person so erecting the building would have no right to rent or lease the same or even to sell it to another post-trader without permission of the military authorities, but his rights are confined solely to that of removing the building from the reserve. Undoubtedly the property in such a building might, with the approval of the commanding officer, be transferred to another post-trader, and such permission would have the same force as a license to a new post-trader to erect such a building at that spot.

"I return you the papers inclosed.

"I have the honor to be, sir, your very obedient servant,

"CLEMENT HUGH HILL,
"*Acting Attorney-General.*

"Hon. WILLIAM W. BELKNAP,
"*Secretary of War.*"

Mr. CARPENTER. I want to ask the manager what possible effect that can have in this case, what it proves or disproves, corroborates or draws into suspicion?

Mr. Manager McMAHON. Having been read, I suppose it is mere matter of argument now.

Mr. CARPENTER. I object to this being considered as evidence unless somebody can see something that is important in connection with it. I cannot see the slightest relevance.

Mr. Manager McMAHON. At the request of the gentleman, I will state the purpose and object of it to the Senate. We have asked the Adjutant-General for a copy of every order that has been issued since the Grierson complaint in regard to post-traders for the purpose of proving a negative, but a very important negative in this case, and that is for the purpose of proving that every order that the Secretary of War issued, by a coincidence of good luck, failed to hit the case of Marsh and Evans.

Mr. CARPENTER. Well, Mr. President, it strikes me that that is trifling with this court and not very respectful to counsel on the other side. That that circular has any possible bearing upon this case does not appear from anything that the managers are willing to inform us of. If it be intended in the spirit of a justice's court practice to pile up testimony here so that it will seem to be a large volume without any regard to what it is, then I see the importance of it; but the New York newspapers could be embodied with just as great effect. But no lawyer, I presume, will undertake to say, certainly none has said, that that is at all material to any issue in this case or that it tends to prove or disprove anything that is in the case.

Mr. Manager McMAHON. Mr. President, I fail to see the justice of the application of the gentleman's remark in regard to a justice's court.

Mr. CARPENTER. I speak of that not disrespectfully to counsel, but because that is the court I am most familiar with.

Mr. Manager McMAHON. I accept the apology. Now, I made the statement in perfect good faith and I offered the order in the most perfect good faith. It may be that my legal learning is limited; I concede that fact, but yet I think that I did imbibe enough in the course of a short practice to know that it was just as important, if you wanted to prove what a man had not done, to prove exactly what he had done and that it was all that he had done. When I offered this I said it did not bear on the particular transaction which we had in hand, that we did not claim that it did, that we did not want it read; but the gentleman who was looking for light insisted that it should be read. I agreed that it should simply be printed in the record, and it ought to have gone into the record, because this honorable body ought to know and to be informed of every particular order in regard to post-traders that may have been issued by Mr. Belknap; for suppose we had only put in one or two, and had not proven to this court that those were all the orders that were issued? Then it seems to me that we should have been derelict in our duty as managers on the part of the House of Representatives.

I say we offered it in good faith, with no disrespect to counsel, and, certainly, we did not intend to insult the court.

The PRESIDENT *pro tempore*. The Chair will submit to the Senate the question whether this letter shall be admitted.

The question was decided in the affirmative.

Q. (By Mr. Manager McMAHON.) Now, General Townsend, have you given us all the orders in regard to post-traders?

A. I am satisfied I have given you all the orders that have passed through the Adjutant-General's office.

Q. Do they generally pass through your office?

A. Such orders as those do.

Q. How long was John S. Evans post-trader—up to what date?

A. His appointment was revoked on the 6th of March, 1876.

Q. Upon what day did General Belknap resign?

A. I think it was the 2d of March, 1876.

Q. Have you any knowledge of any letter or special order issued by the Secretary of War in response to the letter of General Grierson—any communication, I mean, directly with General Grierson?

A. No, sir.

Q. Would your office be the proper channel through which such a letter would pass, the official letter from General Grierson having passed through your office to the Secretary of War?

A. It would generally. It might in the discretion of the Secretary of War be communicated by him to Colonel Grierson without my knowledge.

Q. Is that usual?

A. It is not usual, though it is sometimes done.

Q. Were you familiar with the business habits of Mr. Belknap when he was Secretary of War?

A. Yes, sir.

Q. What was his habit in regard to inspecting all documents that were signed by him as Secretary of War and being personally cognizant of the contents of the letters which he signed?

Mr. CARPENTER. Mr. President, I want to know, but I shall not press it to a vote, if the managers of the House of Representatives here in this trial claim that they can carry knowledge of any particular document to Mr. Belknap by offering to prove that it was his general habit to read everything.

Mr. Manager McMAHON. I think so.

Mr. CARPENTER. That would be evidence that he read the specific document?

Mr. Manager McMAHON. It would not be positive and conclusive evidence.

Mr. CARPENTER. Is it any evidence?

Mr. Manager McMAHON. Yes, sir.

Mr. CARPENTER. Then go ahead.

Mr. Manager HOAR. This is a document signed by him that the inquiry relates to.

Mr. CARPENTER. Would not that document signed by him be the highest evidence?

Mr. Manager HOAR. Certainly.

Mr. CARPENTER. Would it not be the only evidence, for the reason that it is competent?

Mr. Manager HOAR. No.

Mr. Manager McMAHON. Not necessarily. Many a man signs a paper that he does not read.

Mr. CARPENTER. As far as I have ever read on the subject of evidence, a document signed by a party is the only evidence, because it is the best evidence; and if you have got such a signed document, it seems to me that is the best evidence.

Mr. Manager McMAHON. It is true he is to be affected by the contents of that letter; but when you come to the question of actual knowledge, a man may have signed a paper the legal consequences of which he may suffer, and yet he may not actually have been informed of the contents of the letter.

Mr. CARPENTER. We do not object. The managers think it proper.

Mr. Manager McMAHON. We do.

Mr. CARPENTER. Go ahead.

The WITNESS. Very few of the documents I ever presented to the Secretary of War were for his signature. I cannot, therefore, say what was his general custom on the subject of signing letters without inspecting them.

Q. (By Mr. Manager McMAHON.) Had you any personal conversation with the Secretary of War in relation to this Grierson letter?

A. No, sir.

Q. Had you in regard to the New York Tribune article?

A. No, sir.

Cross-examined by Mr. CARPENTER:

Q. I want to call your attention to the copies of the Stevenson letter and of the Marsh letter of August 16, read yesterday. Look at those and see from their marks what was done with them by the Secretary.

A. There are in pencil-marks, apparently in the hand of the Secretary of War, the words: "Answered August 16; file; official," indorsed upon the letter of C. P. Marsh of August 16, 1870.

Q. Now look at the other.

A. There are two words marked in red ink upon the letter of recommendation by Mr. Stevenson of Caleb P. Marsh, "Adjutant-General." That signifies that the letter was sent to the Adjutant-General for file.

Q. Then these letters which were yesterday read in evidence, of Marsh and of Stevenson, were both, by direction of the Secretary of War, put upon the files of the Department in the general course of business?

A. I cannot say so certainly about the recommendation of Mr. Stevenson, because there is nothing to indicate that it was by his direction that it was made official.

Q. But the Marsh letter you say bears his order?

A. Bears his order, apparently in his own handwriting.

Q. To make it official?

A. "File; official," are the words.

Q. They meant that it should be put on the records of the Department?

A. Yes, sir.

Q. What was the first order issued by the Department, as far as you know, in regard to fixing the prices at which goods should be sold by post-traders after the act of July 15, 1870, took effect?

A. The circular of March 25, 1872.

Q. Now look at those documents, [handing a bundle of papers,] and see if they are correct.

A. These documents do not come from my office, and I do not know anything about them.

Q. Do you know something about that? [Pointing to the first page of the bundle of papers.]

A. I do.

Q. What is it?

A. This is the seal of the War Department and the signature of the present Secretary of War.

Q. Did you hear the testimony of General McDowell yesterday?

A. Not perfectly.

Mr. CARPENTER. General McDowell stated in substance that when he spoke to Mr. Belknap in regard to issuing that order of March 25, 1872, Mr. Belknap said to him that there had been trouble about the authority of the Secretary of War, and that that had caused delay in regard to the matter. Now, in this connection I want to offer as evidence the communication to the Judge-Advocate-General and his answer on that question.

Mr. Manager McMAHON. Let us see that first.

Mr. CARPENTER. Certainly. [Handing papers to the managers.]

Mr. Manager McMAHON, (after examining.) All right.

Mr. CARPENTER. I ask the Secretary to read the papers which I hand to him.

The Chief Clerk read as follows:

UNITED STATES OF AMERICA, WAR DEPARTMENT.
Washington City, July 8, 1876.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed are true copies from the records of this Department.

In witness whereof I have hereunto set my hand and caused the seal of the War Department to be affixed on the day and year first above written.

[SEAL.] J. D. CAMERON,
Secretary of War.

BOARD FOR THE REVISION OF THE ARMY REGULATIONS.

WASHINGTON, D. C., *March* 15, 1872.

GENERAL: Will you oblige this board by giving an expression of opinion as to whether there is anything in the act of Congress approved July 15, 1870, which legally debars the Secretary of War from ordering councils of administration to affix a tariff of prices upon goods that post-traders are to sell to troops, and designating the articles that those traders shall keep for sale to the troops?

This seems to the board a necessary measure to secure the soldier from extortion on the part of the traders.

Very respectfully, your obedient servant,

R. B. MARCY,
Inspector-General United States Army, President of the Board.

General J. HOLT,
Judge-Advocate-General, United States Army.

Official copy.

W. M. DUNN,
Judge-Advocate-General.

WAR DEPARTMENT, BUREAU OF MILITARY JUSTICE,
March 16, 1872.

Brevet Major-General R. B. MARCY,
Inspector-General, U. S. A.

GENERAL: I have to reply as follows to your communication of yesterday:

The existing law in regard to post-traders specifies the purpose for which they are authorized, namely, "for the accommodation," not of soldiers, but "of emigrants, freighters, and other citizens." The original statute on the subject, the joint resolution of March 30, 1867, which the present act has repealed, was similarly expressed. Taking into consideration with such provision the abolition, almost cotemporaneous with the first enactment, of the office of sutler, and the conclusion seems necessarily to follow that Congress in authorizing post-traders did not intend to substitute them for sutlers nor contemplate that they would *as such* have any connection with the business of supplying goods to soldiers. In this view, to establish regulations by which traders shall be required to furnish certain articles for sale to soldiers and to affix certain prices thereto would in my opinion be beyond the province of the Secretary. If in the absence of some such regulation the enlisted men of the Army are in danger of being overreached in their dealings with this class of persons, this result must be charged to the defective state of the law on the subject, which can be remedied only by additional legislation.

The fact, it may be added, that the law places traders "under protection and military control as camp-followers" does not, in my opinion, affect the above conclusion. Such control, if exercised at all, could certainly not be exercised as to impose upon the trader a character or obligation not contemplated by the terms of the statute.

I remain, general, very respectfully, your obedient servant,

J. HOLT,
Judge-Advocate-General.

Q. (By Mr. CARPENTER.) What was the date of the letter written by General Grierson making complaint of the condition of things at Fort Sill?

A. February 28, 1872.

Mr. CARPENTER. March 15, 1872, is the date of the letter to the Judge-Advocate-General inquiring as to the authority of the Secretary of War to make this regulation as to prices, and March 16 was the date of the letter in reply, and March 25 was the date of the order which stopped it.

Mr. Manager LAPHAM. And the order is directly adverse to the opinion.

Mr. CARPENTER. Yes, sir. The Secretary of War was so anxious to correct any abuse there that he took the responsibility of reversing his subordinate officer's opinion and issued the order. If you had impeached us for that, that would have been another thing.

The managers have read the letter from Banfield to the Secretary of War and the Secretary of War's reply. So, of course, I do not wish to put those in at this point; but the other letters which were written by the Secretary of War immediately after that, making the investigation, I wish to have read at this point. I ask the Secretary to read what I send to the desk.

The Chief Clerk read as follows:

WAR DEPARTMENT,
Washington City, November 18, 1871.

SIR: Charges have been made to this Department against Evans & Co., (which is presumed to mean John S. Evans,) of Fort Sill, of introducing and selling liquor in the Indian Territory. I desire that you report to me as early as practicable as to the truth of these charges, and what quantities have been shipped by said Evans, and whether such shipments have or have not been in accordance with your orders. Your report will be addressed to me personally.

Very respectfully, your obedient servant,

WM. W. BELKNAP,
Secretary of War.

Colonel B. H. GRIERSON,
Commanding Fort Sill, Indian Territory.

WAR DEPARTMENT,
Washington City, December 5, 1871.

DEAR GENERAL: John S. Evans, post-trader at Fort Sill, Indian Territory, has been charged with conveying spirituous liquors into the Indian Territory and selling them without competent authority. On the 18th ultimo he showed me a permit to sell liquors at Fort Sill which passed through your headquarters, and alleged that all those sold by him had been under that authority and in accordance with its terms. I will thank you to inform me whether this permit was correct. The information I have is that Mr. Evans is a reliable and law-abiding man. Please address your answer to me direct and at your early convenience.

Very truly, yours,

W. W. BELKNAP,
Secretary of War.

Lieutenant-General P. H. SHERIDAN,
United States Army.

[NOTE, (in red ink.) War Department books do not show reply from General Sheridan.]

[Personal.]

FORT SILL, INDIAN TERRITORY, *December* 8, 1871.

SIR: Respectfully referring to your letter of the 18th ultimo, I have the honor to report that more ale, wine, and porter was introduced by John S. Evans than was contemplated by me in my indorsement of July (August) 22, 1871; but it was done by the authority of the officer temporarily in command of the post while I was absent in the field.

I do not think that the post-trader has strictly complied with the provisions of my indorsement referred to, yet I believe it was not his intention to violate the re-

strictions imposed therein. As to the amount introduced, I respectfully refer you to the report of John S. Evans, also to a copy of the indorsement authorizing the introduction, herewith inclosed.

Very respectfully, your obedient servant,

B. H. GRIERSON,
Colonel Tenth United States Cavalry, Commanding.

Hon. W. W. BELKNAP,
Secretary of War, Washington, D. C.

[Copy from post records.]

FORT SILL, INDIAN TERRITORY,
August 22, 1871.

John S. Evans & Co., post-traders, request, in accordance with the permission from division headquarters, permission, under the direction of the commanding officer, to purchase and have delivered for sale at this post forty cases imperial wines, thirty cases Catawba wines, thirty cases still wines, and fifty barrels bottled ales; states that the increased amount ordered beyond what is needed for immediate supply is made to prevent great loss which would occur by breakage from frost in transporting in cold weather.

HEADQUARTERS FORT SILL, INDIAN TERRITORY,
August 23, 1871.

Respectfully returned. The permission herein requested is hereby granted under the authority given by the commanding general of the Military Division of the Missouri.

By order of Major-General J. M. Schofield.

S. L. WOODWARD,
First Lieutenant Tenth Cavalry, Adjutant.

Official copy:

WM. H. BECK,
First Lieutenant, Regimental Quartermaster Tenth Cavalry, Post-Adjutant.

FORT SILL, INDIAN TERRITORY,
December 2, 1871.

SIR: In reply to your inquiries of this date, relative to the introduction and sale of ale and wine, we respectfully submit the following statement:

First. We have introduced ale and wine to the amount of $1,060.

Second. We have sold it to officers, in person and on their orders, and in small quantities, by permission, to troops and civilian employés.

Third. We have now on hand ale and wine to the amount of $300.

Fourth. We have been governed in the sale of the ale and wine referred to by the provisions of the indorsement of the commanding officer Fort Sill, Indian Territory, dated July 22, 1871.

Very respectfully, your obedient servant,

J. S. EVANS & CO.

Lieut. WM. H. BECK,
Tenth Cavalry, Post-Adjutant.

WAR DEPARTMENT, *December* 22, 1872.

SIR: I have the honor to invite your attention to the inclosed copies of letters just received by me in relation to the sale of spirituous liquors by John S. Evans, post-trader at Fort Sill, and particularly to the letter of Colonel Benjamin H. Grierson, which satisfies me that Mr. Evans had military authority for the sales of liquors which he has made.

Very respectfully, &c.,

W. W. BELKNAP,
Secretary of War.

To the SOLICITOR of the Treasury.

Q. (By Mr. CARPENTER.) General Townsend, have you the circular of June 7, 1871?

A. Yes, sir.

Q. Please read the clause of that circular which is marked in the copy I hand you.

A. "Commanding officers will report to the War Department any breach of military regulation or any misconduct on the part of traders."

Q. Under that circular was it the duty of Colonel Grierson, if he knew of any impropriety existing at the post on the part of the traders to report it to the Department?

A. At any time after the receipt of the circular it was his duty.

Q. This circular was issued June 7, 1871, and the date of his letter is February 28, 1872.

A. Yes, sir.

Q. So that he must probably have received this circular before that letter was written. Let me see the Grierson letter. [The witness handed the letter to the counsel.] You have read a letter or order from the Secretary of War directing the other traders at Fort Sill, after the appointment of Mr. Evans, to be removed; have you not?

A. Yes, sir.

Q. Was that the course pursued with all the posts after the act giving the power to the Secretary of War to make the appointments?

Mr. Manager HOAR. Be good enough to repeat your question, Mr. Carpenter.

Mr. CARPENTER. I cannot.

Mr. Manager HOAR. The substance——

Mr. CARPENTER. I want to prove that the same thing precisely that was done at Fort Sill was done everywhere by a general order; and that there is but one exception in the United States, and that is in Texas, where there is more than one trader.

Mr. Manager McMAHON. But no special order was issued to any post except this one.

Mr. CARPENTER. Because nobody resisted it in the other cases. Here the man did not go when he was ordered, and therefore a special order was issued that he should go. In the other cases they went by mere obedience to the order, and there were more traders at this post than at any other in the United States when the order was issued.

Mr. Manager LAPHAM. That shows the great value of the post.

Mr. CARPENTER. That is not our fault. We did not make the post.

The WITNESS. I read some time ago an extract from a circular which was sent to the commanding officers of all posts at which traders were appointed.

Mr. CARPENTER. Now read that again.

The WITNESS. After announcing the appointment of certain individuals as post-traders, the order proceeded: "As soon as Mr. ——— shall be prepared to enter upon the discharge of his duties, you will cause the removal from the military reservation at ——— of all traders not holding a letter of appointment from the Secretary of War under said act," being the act referred to in the first part of the circular.

Q. (By Mr. CARPENTER.) Was that sent to the posts?

A. Yes, sir. Whenever a post-trader was appointed the commanding officer was notified of his appointment in that form.

Q. It was sent in the Fort Sill case as it was sent in all the other cases?

A. Yes, sir.

Q. At any other post in the United States, if the Secretary had been informed that the old trader would not retire, would there not have been an order issued to the commander of the post to put him out?

A. I do not know.

Q. What do you believe about it?

Mr. Manager McMAHON. I object to the question.

Mr. CARPENTER. I congratulate the gentleman on getting back to regular testimony. (To the witness.) After the resignation of General Belknap as Secretary of War, was Mr. Evans removed as post-trader at Fort Sill?

A. An order was sent to remove him, dated the 6th of March, 1876.

Mr. CARPENTER. Read that order, if you have it here.

The witness read as follows:

[Telegram.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, March 6, 1876.

Lieutenant-General SHERIDAN, *Commanding, Chicago:*

The President directs you notify Evans, post-trader Fort Sill, that his appointment is revoked. He will be permitted to remain and sell goods at prices fixed by council of administration till appointment of successor. The President desires you to direct council of administration to meet, and to recommend to Secretary War, through military channels, suitable person for trader. Letter by mail.

E. D. TOWNSEND,
Adjt.-General.

The WITNESS. There was also a letter sent through the mail in the following terms:

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,
Washington, March 6, 1876.

SIR: I have to inform you that your appointment as post-trader at Fort Sill, Indian Territory, has been revoked by direction of the President.

Respectfully,

E. D. TOWNSEND,
Adjutant-General.

Mr. JOHN S. EVANS,
Fort Sill, Indian Territory.

(Through the Lieutenant-General commanding Military Division of the Missouri, Chicago, Illinois.)

There is also a letter addressed to General Sheridan upon the same point.

Q. (By Mr. CARPENTER.) Was a circular issued of which that is one of the printed blanks, [handing a paper;] and, if so, at about what time?

Mr. Manager LYNDE. What is the date of the circular?

Mr. CARPENTER. March 7, 1876.

Mr. Manager JENKS. What is its relevancy?

Mr. CARPENTER. To show that the order was issued and to show the proceedings under it.

Mr. Manager JENKS. What has that to do with this case?

Mr. CARPENTER. I think it will acquit Mr. Belknap.

Mr. Manager HOAR. That was after he went out?

Mr. Manager JENKS. Yes; he went out on the 2d of March. I object to it as irrelevant.

Mr. CARPENTER. We offer this circular in evidence.

Mr. Manager LYNDE. We object to the introduction of that circular in evidence. It bears date, I think, 7th of March, after the resignation of Mr. Belknap, and has nothing whatever to do with the case now before the court so far as we can see.

Mr. CARPENTER. The testimony which we offer is that on the 7th of March, 1876, a general circular order was issued to every post in the United States directing the officers to examine whether the post-traders were satisfactory; and, if not, to state that fact or to have them removed; and that in pursuance of the order, at Fort Sill on the 11th of April, 1876, there was a meeting of the officers and every one of them recommended the re-appointment of Mr. Evans.

A word further as to the relevancy of this testimony. The articles charge that Mr. Belknap received money in consideration that he would not remove Mr. Evans. Madison said in the convention which framed the Constitution that the removal of a good officer without cause would be impeachable. We want to see if we can be impeached for not doing what Madison said would be impeachable. We want to show that this man had the confidence of all the officers at the post; that there never was any reason for removing him; and that Mr. Belknap would have been in the wrong if he had removed him at any time.

Mr. Manager LYNDE. Mr. President and Senators, it seems that

this investigation was not had until Mr. Belknap had sent in his resignation and vacated the office of Secretary of War. He had made the appointment previously, it is true, on the recommendation of the officers at Fort Sill, when he was Secretary of War; but he refused to make it until Mr. Marsh threw in his interest and influence with the Secretary of War, who had informed Mr. Evans that he had already promised this appointment to Mr. Marsh. That the officers at Fort Sill found no fault with Mr. Evans and excused him of the high charges which he made for the goods which he sold to the officers and soldiers on the ground that he was paying $12,000 a year bonus we are informed by the letters of the commanding officers at the post and by the other evidence we have introduced in the trial. Therefore that these same officers should, subsequent to the resignation of the Secretary of War, when this matter was under investigation and when Mr. Evans was no longer called upon to pay this bonus of $12,000, have sufficient confidence in his integrity to recommend his continuance in that position, makes nothing in favor of the accused in this case. We therefore claim that it has no pertinency to the issue before the Senate, and ask that it may be excluded.

Mr. CARPENTER. If the other side do not claim that there was any excuse whatever at any time for the removal of Mr. Evans by the Secretary of War, that is one thing. They charge in the articles of impeachment that we received money in consideration that we would not remove him. We have already shown by letters from the very officers at the post, when they were interrogated officially by Belknap, that he was a good trader, an honest man, &c. We now propose to show that the President, knowing nothing about this thing, but the storm being raised, removed him at once, and ordered the council of administration to recommend a man, and that they unanimously recommend him for re-appointment. It seems to me that if the order to the post-trader about his house and permission to take it away when he left the service is evidence on any issue in this case, this is relevant as bearing on one of the express allegations of the articles themselves.

Mr. BLAIR. Mr. President and Senators, the court will observe that there are two theories here; one by the prosecution and one by the defense, and they recur at every stage of this case. Yesterday we had this battle with the managers, they assuming that we knew of these arrangements, of the existence of this contract, and were receiving knowingly this money. Of course they think that theory is true, and of course they think there is no other theory in the case. But there is another which we mean to make good to this court, and it is that we knew nothing of the consideration whatever; that this appointment was made in perfect good faith; that so far as we knew the law was being executed, and when failure of its execution was called to our attention we got the advice of our officers, those who were most familiar with this case, and got their remedies and applied them. They would think the argument to be on their side that we ought to have immediately removed this man, broken up his establishment, and turned him out, as the President did when the fact was finally brought to his attention and it was published that this contract existed. Let the Senate assume, as we infer they will assume, that the Secretary of War knew nothing of this transaction between these other parties; and that this man executed his duties faithfully. That he did execute them faithfully and that he was a good officer, we think is proved by the unanimous recommendation of the officers and soldiers at this post. We want now to show to the court that this officer, notwithstanding all the charges which were made, was recognized as a good and proper officer, and did his duty so satisfactorily that every officer at the post recommended his re-appointment. We think this competent proof. We think this proper to go before the Senate as a circumstance to weigh in their judgment upon this case.

Mr. Manager McMAHON. Mr. President and Senators, the proposition under discussion is the admission of a recommendation of the post-trader who was maintained in office by the Secretary of War under, as we claim, a corrupt arrangement, of which he was cognizant. The recommendation is signed by these parties after the whole matter had been exposed to the world, after the Secretary of War had gone out of office, and after, as has been well stated, Mr. Evans was relieved of that incubus which made him at one time an undesirable man at the post. The inference that has been drawn surprises me. I am only more surprised by one thing in the arguments on the other side, and that is the serene confidence in the innocence of his client as uniformly exhibited by my friend to the right (Mr. Blair) when he gets up to say anything in regard to this case. John S. Evans, say these gentlemen, was a good officer, and therefore Mr. Belknap ought never to have removed him. We never asked General Belknap to remove him. But what are the facts? These same officers, or others who stood in the same position and had the same confidence of the country, recommended John S. Evans unanimously in 1870 for this post. Those papers were laid before the Secretary of War, and what do we find? The unanimous recommendation of every man who knew John S. Evans was overlooked. The fact that John S. Evans had invested one hundred and twenty-five thousand dollars' worth of property there was overlooked.

Mr. CARPENTER. That is summing up the case, and has nothing to do with this particular question.

Mr. Manager McMAHON. I beg your pardon; I am answering your argument. The fact that this man was to be ruined by the appointment of Caleb P. Marsh, who had no recommendation on file when appointed, was overlooked, and John S. Evans was put in not because he had the recommendation of every officer at the post, but in spite of that fact, simply because Mr. Marsh went in and said, as we may prove on our side, that he should be retained.

Mr. BLAIR. Does not the gentleman see that this is arguing the case? I put it to the gentleman if it is fair to get up here and repeat and ding-dong all the time the facts claimed by the other side before the Senate upon the mere question of the admissibility of a piece of testimony as tending to show our theory of the case?

Mr. Manager McMAHON. It is impossible, Mr. President, to argue the admissibility of any particular piece of evidence without in some degree trenching upon the merits of the case; and I think I am excusable in doing that when I have to deal with gentlemen who are so apt and expert in themselves.

To come back to the point I was arguing when interrupted, they claim that John S. Evans ought not to have been removed and was not removed, because he was a good officer, and they want to prove that by a subsequent statement, whereas until Caleb P. Marsh told the Secretary of War "put my man Evans in," Evans could not go in.

Mr. CARPENTER. That is not the question. The question is whether he was a fit man to be in, not how he got in.

Mr. Manager McMAHON. Then the theory of the gentleman is very much this, in politics, in ethics, and in law, that if you appoint a fit man for a corrupt consideration, it is all right.

Mr. BLAIR. That is the old story.

Mr. Manager McMAHON. I know it is the old story, and we are going to try the case on the old story until we get through with it. If these gentlemen are to be called and sworn, and will express their opinion here and be liable to be cross-examined if there is anything of importance, very well; but this mere paper is nothing.

Mr. CARPENTER. It is an official paper coming from the office of the Secretary of War.

Mr. Manager McMAHON. But not an official opinion.

Mr. CARPENTER. It is as much official as the letters which you have had read from the district attorneys in Missouri, or Arkansas, or some other place.

Mr. EDMUNDS. I should like to ask the date of the circular which is now offered.

The PRESIDENT *pro tempore*. The witness will state the date of the circular.

The WITNESS. The 7th of March, 1876.

The PRESIDENT *pro tempore*. The question is, Shall the circular be admitted?

The question was determined in the negative.

Mr. CARPENTER. We now offer the recommendation.

Mr. Manager McMAHON. We object to that of course on the same ground, that it is a recommendation subsequent to March 2, 1876. Am I correct?

Mr. CARPENTER. I understand so. I want to have taken down in the record so that I can refer to it perhaps hereafter, if necessary in the argument of the case, the fact that we offer here to show that the President issued a circular requiring the council of administration at every post to examine into the competency of the traders then in place and to recommend the removal of such as ought not to hold the place; that in consequence of that order of the President, on the 11th of April, 1876, the council of administration at Fort Sill held its regular meeting under that circular and recommended this man Evans, and that he was also recommended by all the officers at the post at the time.

Mr. BLAIR. Does the Chair overrule our question?

The PRESIDENT *pro tempore*. On the same principle decided by the Senate, the Chair sustains the objection, the paper being subsequent to the resignation of the Secretary of War.

Mr. BLAIR. But it is a piece of evidence.

The PRESIDENT *pro tempore*. The Chair so understood it, but decided it on the principle that it was subsequent to the date of resignation, and on that the Chair ruled. The Chair will, however, submit the question to the Senate, if desired, Shall this paper be admitted?

Mr. LOGAN. What is the paper?

The PRESIDENT *pro tempore*. The witness will give the date.

The WITNESS. "Proceedings of the council of administration convened at Fort Sill 7th March, 1876." The council convened on the 8th of March pursuant to an order of the day previous.

The PRESIDENT *pro tempore*. Shall this paper be received?

The question was determined in the negative.

Mr. EDMUNDS. If the examination of this witness is to continue much longer, I ask leave to move that the Senate take a recess for fifteen minutes in order that the counsel and witness may rest from their labor during that time. (To Mr. Carpenter.) Will you want the witness much longer?

Mr. CARPENTER. O, yes, we shall want him for an hour longer, or more.

Mr. EDMUNDS. I move that we take a recess for fifteen minutes.

The motion was agreed to; and a recess of fifteen minutes was taken.

The Senate sitting for the trial of the impeachment re-assembled at three o'clock p. m.

E. D. TOWNSEND's cross-examination continued.

By Mr. CARPENTER:

Question. Do you know Captain George T. Robinson, who was in the Tenth Cavalry?

Answer. I know there was such an officer in the Tenth Cavalry.

Q. Was he at some time court-martialed?

A. Yes, sir.

Q. Have you here the proceedings of his trial?

A. I have not the proceedings; I have a copy of the order promulgating them. It does not include the testimony, but only the findings.

Q. You may state, if there is no objection to that form, what the finding of the court was.

Mr. Manager LYNDE. We object.

Mr. Manager HOAR. We do not object to the form; we object to the substance.

Mr. CARPENTER. To the document then?

Mr. Manager LYNDE. We object to that.

Mr. Manager HOAR. We do not object to the form but to the substance of the fact you propose to prove.

Mr. CARPENTER. Let us hear what the objection is.

Mr. Manager LYNDE. For what purpose is it sought to introduce this evidence?

Mr. CARPENTER. We offer it for this purpose: This man Robinson was, as I understand, court-martialed and sentenced by the court to be dismissed the service. He was at the Saint Louis barracks at the time; and after the finding by the court was sent on to Washington to be approved by the Secretary of War he wrote a letter to the Secretary substantially stating the allegations which are now made in these articles and by the testimony offered by the managers, and containing what we regard as a blackmailing appeal to the Secretary of War, that he must disapprove of the findings of that court or the writer would take steps to disclose what he says existed in regard to the tradership at Fort Sill.

Mr. Manager LYNDE. What is the date of that communication?

Mr. CARPENTER. April 2, 1875. Thereupon General Belknap examined the papers in the case, found that the proceedings were regular, that the court was justified in its finding, and he approved the finding and cashiered the captain, and filed this of record.

Mr. Manager HOAR. Who approves the finding, the Secretary of War or the President?

Mr. CARPENTER. The President approved it, but it passed through several channels. It was approved first by the Judge-Advocate-General, then by the Secretary of War, and then by the President, who ordered the dismissal. General Belknap filed this letter at that time with those papers, and we have it certified here from the files of the War Department.

Mr. HOWE. At what time was that letter filed?

Mr. CARPENTER. This letter is dated April 2, 1875.

Mr. HOWE. Does the date of the filing appear?

Mr. CARPENTER. It does not. This is certified, but it does not certify the time when it was filed.

Mr. Manager HOAR. Probably after that time.

Mr. Manager LYNDE. I do not yet understand from the counsel the purpose or object they have in presenting that record or those papers to the court.

Mr. CARPENTER. I thought I had gone far enough to show the bearing of it. We should argue to a jury, because it might be necessary there; we should not take any time to argue it to this Senate, because we should suppose the thing was transparent that a man would not put deliberately upon the records of the War Department evidence of any transaction which implicated him if he knew there was such a transaction and that it did implicate him. The fact that under that threat he approved of the finding, and that this man was subsequently dismissed, and this letter put upon the files of the Department, has a material bearing. We shall show that at the time when these papers came on they were exhibited to General Townsend, and a few days after were filed in the office; I do not now at what particular time.

Mr. Manager LYNDE. Has this letter ever been filed in the office?

Mr. CARPENTER. I think so from that certificate, [handing the papers to Mr. Manager LYNDE.]

Mr. Manager LYNDE. Has the General the original of which this is a copy?

Mr. CARPENTER. He says he has.

Mr. Manager LYNDE, (to the witness.) Look to the original and see when it was filed.

The WITNESS. There is no mark on the letter to show.

Mr. CARPENTER, (to the witness.) Was that letter shown to you about the time the finding of the court was sent on for approval?

Mr. Manager HOAR. One moment. We object to that. Mr. President and Senators, I understand the offer of proof is exactly this: that in April, 1875, an Army officer who had been court-martialed wrote a letter to the Secretary of War stating that this bargain alleged to have existed between the Secretary of War and Marsh and Marsh and Evans had come to his knowledge, and threatening that if the Secretary did not cause the proceedings under the court-martial to be abandoned he would expose the information he had gained, and that thereupon the Secretary of War made known the letter to the Adjutant-General and proceeded to advise the President to approve the sentence of the court-martial dismissing the officer from the service, which was accordingly done.

Mr. CARPENTER. And that he also showed this letter to the President at the time.

Mr. Manager HOAR. That does not strengthen the offer any. Now, it seems to me a statement of that offer is enough to show its total immateriality to the case. It is not necessary to argue it.

The PRESIDENT *pro tempore*. The Chair will submit the question to the Senate, Shall this paper be admitted?

Mr. HOWE called for the yeas and nays, and they were ordered.

Mr. MITCHELL. Before the vote is taken I should like to inquire from the counsel for the defense if they are able to state when this letter was filed in the Department?

Mr. CARPENTER. Mr. President, I understand General Townsend can state all about that. We understand that it was filed about the time of the receipt of it and about the time it was acted upon.

Mr. Manager MCMAHON. It never was in his office. It came from General Dunn's office.

Mr. CARPENTER. Its being in the Adjutant-General's Office is of no consequence. The point about it is, that this man had been tried by a court-martial; the finding of the court had been sent on to Washington for approval and was pending for approval by the War Department at the time.

Mr. MERRIMON. What time?

Mr. CARPENTER. In April, 1875, or about that time. While that was pending there, this man writes a letter—it is an oracular kind of letter; it is a blackmailing letter evidently, as the letter will show when read—setting forth that he is informed of irregularities in regard to the tradership at Fort Sill and some connection of the Secretary of War with it, and then he informs the Secretary that if he is driven out of the Army, that is to say, if the finding of that court-martial shall be approved, he will take certain steps; on the other hand, if that finding is not approved and he is retained in the Army, he will send all these evidences to General Belknap. General Belknap, getting this letter, sends for the papers, examines them himself in connection with the Adjutant-General, shows the Adjutant-General this letter, approves the finding himself, takes it up to the President and shows it with this letter to the President, and the President affirms the finding of the court, and cashiers the man from the Army.

Mr. CONKLING. Is the writer of this letter connected with the case in any other way?

Mr. CARPENTER. In no other way than that while the finding of the court was pending before the Secretary of War it was written by him to the Secretary of War and received by the Secretary, and is marked "personal," and in 1875 this was shown to the President and to the officers having charge of this case, and about that time lodged with the papers in the case. That is what we offer to show, and then we shall ask some presumption arising from that fact of Mr. Belknap's innocence or that he is so great a fool that he is not amenable to criminal justice.

Mr. Manager HOAR. Mr. President, it seems to me that that act of the Secretary of War affords no evidence or presumption of his innocence. A black-mailing officer, himself convicted by court-martial, sent to the Secretary a certain threat and demanded certain action. If the Secretary of War had acceded to his demand, he would have put himself in the power of that officer forever; and the acceding to that demand or concealing the letter from the persons about him in the War Department would have been a confession of guilt. On the contrary, the exhibition of the letter and the going on with the court-martial was denial. All, therefore, that it is offered to show from the conduct of the Secretary of War is that in April, 1875, being charged with this offense, he denied it and did not confess it; in other words, he seeks to make evidence for himself by proving a denial, which is the substance of his own conduct.

Mr. Manager LAPHAM. Mr. President and Senators, I desire to state another fact in this connection. The managers learned from Mr. Robinson that he had communicated with the Secretary of War the offense which had been committed at Fort Sill. We followed it up by an inquiry at the Adjutant-General's Office to learn whether any such communication from Captain Robinson was upon file, and we have the certificate of the Adjutant-General that no such paper is among the files of the War Department. Now, until it is shown that this paper was placed on file before these accusations were publicly made against the defendant, we certainly object to its introduction. There is no evidence at this time as to when, if ever, it was placed on file. It was not there at the time we began this investigation, as we have the evidence of the office to show; and on that ground we object and object most strenuously to the receipt of this paper.

Mr. CARPENTER. In that particular I understand that the manager is mistaken. We shall prove, as I understand it, from General Townsend himself, that this paper was in the files of the Department long before any exposure came, and about, as I understand, the time of the approval of the finding of the court.

Mr. SARGENT. Is there objection to having that fact proved preliminarily before we proceed to vote on the admission of the document?

Mr. Manager HOAR. No; let that question be asked.

The PRESIDENT *pro tempore*. If there be no objection the question will be put.

Q. (By Mr. CARPENTER.) Have you the original of this letter?

A. I have.

Q. To your best recollection when was it filed or left with the papers in that case in the Department; it appears not to be marked "filed?"

A. I saw the letter; I think it must have been just about the day of its receipt. It was not then left with me, but I subsequently obtained it from General Dunn, now the Judge-Advocate-General of the Army. I cannot say when it came into his hands or how.

Q. Was it not sent to him with the court-martial papers when they were sent to him for his examination and approval?

A. Very possibly, but he must tell that; I cannot.

Mr. Manager HOAR. You may assume that, Mr. Carpenter, for the purpose of your question.

Mr. CARPENTER. That we understand is the fact, that they were sent to the Judge-Advocate-General and afterward by him returned.

Q. (By Mr. WHYTE.) I desire to ask the Adjutant-General when he personally received that letter from the Judge-Advocate-General?

A. I think it was about the 3d of March, 1876.

Q. That was after the resignation.

A. After the resignation of the Secretary of War.

Mr. CARPENTER. That, I submit, can make no difference. It was in a public office, in Dunn's office. It did not matter whether it came back with the papers or was there. It had been in a public office of the Government all this time.

Mr. Manager McMAHON. It was not an official paper; it was a personal letter; and so the Adjutant-General will tell you.

Q. (By Mr. LOGAN.) I wish to ask the witness this question: Is General Dunn the Judge-Advocate-General of the Army?

A. He is.

Q. Is his office a part of the War Department?

A. It is.

Q. Does he keep regular files of papers?

A. He keeps the files of court-martial cases.

Q. The papers in regard to courts-martial?

A. Yes, sir.

The PRESIDENT *pro tempore*. The question is on the admission of this paper.

The question being taken by yeas and nays, resulted—yeas 21, nays 18; as follows:

YEAS—Messrs. Allison, Booth, Boutwell, Bruce, Conkling, Conover, Cragin, Ferry, Frelinghuysen, Harvey, Hitchcock, Howe, Ingalls, Logan, Mitchell, Morrill of Vermont, Paddock, Sargent, Sherman, West, and Wright—21.

NAYS—Messrs. Bogy, Cockrell, Dawes, Dennis, Edmunds, Gordon, Hamilton, Kelly, Kernan, Key, McCreery, Maxey, Merrimon, Robertson, Wadleigh, Wallace, Whyte, and Withers—18.

NOT VOTING—Messrs. Alcorn, Anthony, Barnum, Bayard, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Caperton, Christiancy, Clayton, Cooper, Davis, Dorsey, Eaton, Goldthwaite, Hamlin, Johnston, Jones of Florida, Jones of Nevada, McDonald, McMillan, Morrill of Maine, Morton, Norwood, Oglesby, Patterson, Randolph, Ransom, Saulsbury, Sharon, Spencer, Stevenson, Thurman, and Windom—34.

The PRESIDENT *pro tempore*. The objection is overruled.

Q. (By Mr. CARPENTER.) What was the finding of the court in the case of Captain Robinson?

A. I read from General Court-Martial Orders No. 25——

Mr. Manager McMAHON. One moment before that goes on. It seems to me, Senators, that we are not now to go into the trial of Mr. Robinson. That is what this leads to. We are, I suppose from the gentleman's asking for this finding, to discover whether Mr. Robinson was properly convicted or improperly convicted.

Mr. CARPENTER. Not at all.

Mr. Manager McMAHON. What is the object in asking the question?

Mr. CARPENTER. Simply that he was convicted.

Mr. Manager McMAHON. What difference does it make whether he was convicted or not? You want simply to produce the letter and prove the fact that it was put on file. Who Mr. Robinson was, or what connection he had with it, has nothing to do with this case, it seems to me.

Mr. CARPENTER. I want to show that the letter was written to General Belknap at the time that case was pending before him for approval or disapproval. Of course I do not care to go into the testimony in that case to show whether the finding was right or wrong, but simply to show the pendency of the case in the War Department.

Mr. Manager McMAHON. It is sufficient to show that it was pending.

Q. (By Mr. CARPENTER.) Now, what was the judgment?

A. The sentence was, "to be cashiered and forfeit to the United States all pay and allowances now due or to become due, and to have his crime, name, place of abode, and punishment published in and about Philadelphia, Pennsylvania, and Saint Louis, Missouri." The sentence is "approved."

Mr. Manager HOAR. Mr. Carpenter, I do not understand that the Adjutant-General gave the date of this approval of the sentence.

Q. (By Mr. CARPENTER.) What was the date of the judgment and what the date of the approval?

A. The date of the approval by the President was April 14, 1875.

Q. Do you remember the fact of the papers in that case being submitted to the Secretary of War for examination?

A. I know that they were submitted to him, and there are marks in his handwriting on the original proceedings showing that he had seen them.

Q. Then from him they pass to the President, who makes the order of final approval and discharge?

A. So I suppose, though I do not know it of my own knowledge.

Q. Does not the order say so?

A. The order says so, and I believe that the Secretary of War took the proceedings to the President and obtained his approval.

Mr. CARPENTER. Now, we offer this letter, and ask that it be read.

Mr. Manager McMAHON. Have you any objection to my asking one question before you read it?

Mr. CARPENTER. Of course not.

Q. (By Mr. Manager McMAHON.) How does the date of the approval of the order in regard to Mr. Robinson correspond with the date of the receipt of that letter by General Belknap?

A. It must have been several days subsequent to the receipt of the letter.

Mr. CARPENTER. Read the letter.

The Chief Clerk read as follows:

[Personal.]

SAINT LOUIS BARRACKS, MISSOURI, *April* 2, 1875.

SIR: I have the honor to inform you that I am now preparing a set of charges against the firm of J. S. Evans & Co., post-traders at the post of Fort Sill, Idaho Territory. I have been stationed at that post since its first location in 1868. Among the many charges I am preferring against this firm is one of malicious slander, in which both members of this firm have repeatedly stated, not only to myself but to Brevet Major-General Hazen, Brevet Major-General Grierson, and many others of the officers of the Sixth Infantry and Tenth Cavalry, that they were paying you at one time $15,000 per year, at another date $12,000 per year, $1,000 per month in advance, and only a short time ago Mr. J. J. Fisher stated in my quarters at this post that he was still paying you the same amount. He also informed General Grierson at the same date at this post of what he termed "these facts." I was, while at the post of Fort Sill, Idaho Territory, on the post council of administration many times as its "recorder." The repeated statements of both J. S. Evans and J. J. Fisher to the fact that they could not sell their goods any cheaper to the men and officers of the United States Army because they were obliged to pay to the Secretary of War $15,000 per year, monthly in advance, I took down carefully with day and date and the names of the officers present who heard these statements made. They were made before me officially as the recorder of the post council of administration.

I have thought that you, sir, should know these facts before I brought them to your official notice by sending the charges to you through all of the official channels, and to ask your advice as to the best and most expeditious manner of bringing these men to justice. Every man and officer of these regiments have been most outrageously swindled by this firm, as I have abundant testimony to prove. If I leave the Army by sentence of the general court-martial that has just tried me, it is by getting into unavoidable debt to these men, who, after getting all the money I had, now seek to ruin me, knowing that I alone am in possession of all the facts in the case against them. I honestly believe that these slanders on your name and action are false, and shall bring this firm to speedy justice, whether I am in or out of the Army, and ask of you, sir, your advice as to my procedure before action. Should I remain in the Army, I shall, if you desire, transmit all of the documents entire to you for your information and such action as you may see fit to take. I will either act as prosecutor or witness, as you may elect. Many of my notes are at my home in Baltimore, some of them here; but I have enough to draw charges on here, which I am now doing. Several newspaper men have made me very alluring offers for these papers, but I prefer to take the course I am now doing, so as to get officially all the facts on record before a court of justice against these men.

I am, general, your obedient servant,

GEO. T. ROBINSON,
Captain Tenth Cavalry.

Hon. W. W. BELKNAP,
Secretary of War.

Q. (By Mr. CARPENTER.) I want to call your attention now, General, to the charges about whisky and the investigations which were made of them. I want to know if there was anything about that transaction on the part of the Secretary of War that was a departure from the ordinary method of doing such business in the Department? I mean the correspondence with Grierson and the other letters on the subject. Was that the usual way of investigating any charges that were made?

A. It is often done in that way. Sometimes it is done by directing the Adjutant-General to write to the commanding officer.

Q. The way is to write to the commanding officer before action?

A. Yes sir; to tell him to investigate.

Q. The letters were all filed officially, and a record kept of the entire proceeding?

A. Yes, sir.

Mr. Manager McMAHON. You do not mean to claim in this particular case that there was any official order to the commanding officer to investigate?

Mr. CARPENTER. Most decidedly. I read the letter to that effect about an hour ago.

Mr. Manager McMAHON. I must have been out.

Mr. HOWE. Before the subject of this letter passes away, I wish to understand whether the witness did or did not state where the letter was kept between the time of its receipt in 1875 and the time at which I understand him to say it came on to his files in 1876; or whether he knew.

Mr. Manager LAPHAM. He does not know.

The WITNESS. The letter was showed to me by the Secretary of War about the date of its receipt. I subsequently, after the resignation of General Belknap, received it from the hands of General Dunn, the Judge-Advocate-General. I do not know where it was between the time I first saw it and the time that General Dunn received it, or when General Dunn did receive it, or how.

Q. (By Mr. CARPENTER.) But you say you saw it about the time it was received?

A. I think so.

Q. In connection with the papers of that case?

A. No, sir.

Q. I do not say that it was filed with the papers; but did you see it about the time that case was being considered in the War Department?

A. The proceedings of the court-martial were received in the Judge-Advocate-General's office on the 1st of April, 1875. This letter was written at Saint Louis on the 2d of April, 1875, and the envelope shows that it was post-marked there on the 3d of April, 1875. My recollection is that when the Secretary of War showed me this letter he asked me where the proceedings in the Robinson case were and directed me to get them from the Judge-Advocate-General as soon as possible. I know the proceedings were approved by the President on the 14th of April, 1875.

Q. Several days after the receipt of that letter?

A. Several days after I saw the letter.

Mr. Manager LAPHAM. Mr. Carpenter, will you ask whether the President would approve except on the request of the Secretary of War?

Q. (By Mr. CARPENTER.) The President might approve, of course, without the request of the Secretary of War?

A. I have never been present at any conference between the Secretary and the President on those subjects.

Q. (By Mr. MITCHELL.) Is there anything on this paper to indicate that the Secretary of War took any action whatever either recommending approval or disapproval? Is there anything indicating on the paper that the Secretary of War did anything?

A. On the proceedings of the court in the Secretary's handwriting, as near as I remember it, are these words: "Approved by the President."

Q. (By Mr. CONKLING.) In the handwriting of the Secretary?

A. In the handwriting of the Secretary of War.

Q. Did the witness state who carried the proceedings to the President for approval?

A. I did not. My impression is the Secretary of War took them.

Q. (By Mr. CARPENTER.) Did you or not understand at the time this matter was being examined by the Secretary of War that he was in favor of approving the finding of the court?

A. I did so understand.

Q. And that he took the papers to the President to have the President ratify the finding and discharge the man?

A. I am quite sure that was the case.

Q. How long have you been connected with the War Department in various positions?

A. I first came into the War Department as a subaltern officer in 1846, but have not been on duty there all the time since.

Q. How long have you been Adjutant-General?

A. I received the commission on the 22d of February, 1869, but was acting in that capacity before.

Q. Under what Secretaries of War have you acted as Adjutant-General?

A. Secretary Stanton, Secretary Rawlins, Secretary Grant, Secretary Schofield, Secretary Belknap, Secretary Taft, and Secretary Cameron. I believe those are all.

Q. What was the manner of the discharge of his duties as Secretary of War by General Belknap while he held that office?

A. He impressed me as a person who took great care to understand all the business that came before him and to transact it efficiently and justly.

Q. Does not your position as Adjutant-General give you an insight into many of the duties that are discharged by the Secretary of War?

A. It does.

Q. And a pretty good opportunity to judge whether he did his duties well or ill?

A. Yes, sir.

Q. In other words, your relation to the Secretary is a confidential relation, is it not?

A. In matters purely military it is.

Mr. CARPENTER. That is all I have to ask the witness at present. We may recall him hereafter in connection with other subjects.

Re-examined.

By Mr. Manager MCMAHON:

Q. Have you the original letter of Robinson there?

A. Yes, sir.

Q. Look at it and state to the court whether that letter has ever been of official record in the Judge-Advocate-General's Office with the proceedings of the court-martial.

A. It has no mark indicating that.

Q. When letters are filed officially, do they always have marks indicating that they have been so filed?

A. As a rule they ought to have, but they may not be so marked.

Q. You find no such marks upon that paper?

A. No, sir.

Q. Was that paper handed to you by the Judge-Advocate-General alone or with other papers?

A. Alone. I may say, however, that I asked the Judge-Advocate-General to give me the proceedings of the court in Robinson's case at a different time from the time this letter was handed to me.

Q. Before or after?

A. I cannot recollect. It must have been nearly the same day at any rate.

Q. But when you did ask him for the proceedings you did not get that letter with the proceedings?

A. I did not. However, the Judge-Advocate-General may have gone to the proceedings to get this letter when he handed it to me. I cannot tell whether it was put with the proceedings or not. I do not know.

Q. All you know is that he handed you the papers at different times?

A. Yes, sir.

Q. (By Mr. BLAIR.) You do not recollect whether he handed you those papers before or after he handed you that letter?

A. No; I do not.

Q. (By Mr. CARPENTER.) Would not the fact that this letter was marked "personal" prevent its being marked "official" without some specific instruction about it?

Mr. Manager MCMAHON. I am not through with the witness.

Mr. CARPENTER. I beg pardon.

Mr. Manager MCMAHON. I thought you did not understand it. (To the witness.) At the time that letter was shown to you by the Secretary of War did conversation pass between you and him in regard to it?

A. So far as I recollect he sent for me especially, and when I proceeded to his room he handed me the letter and said, "I wish you would read that." I made the remark, "It looks to me like a threat," when I returned it to him. I cannot recollect whether he made any reply or not.

Q. (By Mr. Manager MCMAHON.) Did anything further transpire then between you and him?

A. Nothing that I recollect in connection with this letter, except that my impression is that he at that time asked me in relation to the proceedings in Robinson's court-martial.

Q. Did he at that time or at any subsequent time direct any investigation to be made at Fort Sill in regard to the statements therein made as to whether Evans & Co. had made such statements?

A. Not to me.

Q. To your knowledge, did he make any such inquiry of any person?

A. I do not know of any such inquiry.

Q. But he immediately called for the proceedings, and in two or three days brought them back to you indorsed, "Approved by the President," and the approval in his handwriting?

A. They did not come to me through his hands; but that is in the main the course they took.

Q. The date of that letter, I believe, was Saint Louis, April 2, 1875?

A. Yes, sir; and postmarked April 3.

Recross-examined by Mr. CARPENTER:

Q. Was it received in due course of mail from Saint Louis to Washington?

A. From the connection of events in my mind, I think it must have been received in due course of mail, and that I saw it the day of its receipt.

Q. Who preferred the charges against Captain Robinson on which he was court-martialed?

A. They were preferred in the regular routine course of business at my instigation. Charges were drawn up by the Judge-Advocate-General on official papers which came into my hands and which I referred to him for the purpose.

Q. Did the Secretary of War know anything about those charges?

A. When they were prepared I said to him that I proposed to ask General Pope, the commanding officer of the department, to order a court-martial for the trial of Robinson upon those charges, mentioning not in detail but generally what the charges were. The Secretary of War assented, and that course was taken.

Q. Did the Secretary of War know Robinson or anything about him?

A. I have no reason to suppose he did.

Mr. CARPENTER. That is all.

The PRESIDENT *pro tempore*. Do the managers desire to put any further questions to the witness.

Mr. CARPENTER. I simply put these questions for the purpose of showing that Belknap was not persecuting him.

Mr. Manager MCMAHON, (to the witness.) One question, General. In the conversation between you and General Belknap did he state anything about having received a previous letter of similar import?

The WITNESS. No, sir; not that I remember.

Mr. Manager MCMAHON. Of course before the institution of the court-martial. That is all.

The PRESIDENT *pro tempore*. The witness is excused.

WILLIAM F. MOODY called and sworn.

Mr. Manager MCMAHON. I will state to gentlemen on the other side, in order to expedite matters, why we call Mr. Moody. We had him under subpœna originally, but sickness detained him. He is the express agent at New York who made out the original way-bills of these money packages. If you desire anything further on that question we are ready to go into it. If you waive it——

Mr. CARPENTER. We do not desire you to go further into it.

Mr. Manager McMAHON. We do not want to consume time. He is the person who made out the original way-bills, as you will remember the testimony, gentlemen.

Mr. CARPENTER. We do not want to bother you about that.

Mr. Manager McMAHON, (to the witness.) You may go home, Mr. Moody. The point is conceded by the other side.

Mr. EDMUNDS. What is conceded?

Mr. Manager McMAHON. It is conceded that the way-bills accompanying the money are sufficiently proved, and substantially, as I understand, admitted by gentlemen on the other side.

Mr. EDMUNDS. Do you mean by that that the person who purported to send the money really sent it?

Mr. Manager McMAHON. Not that, because we expect to prove that by Mr. Marsh This is simply the express agent who received it.

Mr. Manager HOAR. I understand that the counsel do not propose to offer any evidence to contradict the fact that Mr. Belknap received the packages which we have shown he receipted for. That is all.

Mr. CARPENTER. I understand that you have already proved these papers. Do you call him to prove the handwriting and all that sort of thing?

Mr. Manager HOAR. You do not propose to offer any evidence to contradict the fact that he received those packages?

Mr. Manager McMAHON. Perhaps I had better ask Mr. Moody one or two questions in the same connection.

WILLIAM F. MOODY examined:

By Mr. Manager McMAHON.

Question. What is your position in New York?

Answer. Money clerk in Adams Express Company.

Q. How many years have you been with that company?

A. Thirteen years.

Q. It is your business to make out the way-bills accompanying money shipments to Washington and other places?

A. Yes, sir.

Q. Are you acquainted with Caleb P. Marsh?

A. I am not.

Q. You do not remember him?

A. I do not.

Q. In making out these way-bills from New York just state in brief the manner in which you make them up; what is done with the money, &c. Explain in a few words.

A. The way-bill is made by copying the address, the amount on the package, the consignor's name, and the consignee's name on a sheet called a way-bill.

Q. Who assists you now in comparing those packages with the way-bills?

A. I am assisted by Mr. Young at times; at other times I do it all myself.

Mr. Manager McMAHON, (to the counsel for the respondent.) Do you desire any further proof? Do you wish us to go through the books and identify them?

Mr. CARPENTER. No.

Mr. Manager McMAHON. Very well.

Cross-examined by Mr. CARPENTER:

Q. You do not see the money in the packages?

A. No, sir. I do not know anything about them except from the marks.

Q. You do not know that any one of those packages contained any money?

A. I do not. It might have contained brown paper, so far as my knowledge goes.

Q. (By Mr. Manager McMAHON.) But when you put on the way-bill an entry of a package and the figures "$1,500," that indicated that "$1,500" was on the outside of the envelope?

A. In all cases.

Q. (By Mr. CARPENTER.) Does that indicate $1,500 in money or $1,500 in value in the package?

A. I cannot answer that question.

Q. You cannot tell?

A. I cannot tell what it contains.

Q. You receive it as a package and the company becomes responsible for the amount marked upon it?

A. Yes, sir.

Q. And your rates of charges of course depend on the value of the package?

A. On the value of the package.

Re-examined by Mr. Manager McMAHON.

Q. State whether the money packages that are delivered to you as money packages proper come forward in a separate safe from other express packages.

A. They do.

Q. A separate way-bill accompanies the separate safe?

A. What we call a money way-bill.

By Mr. CARPENTER:

Q. But whether it is money or something else you are not required to know and you do not know?

A. We do not know.

Q. You do not know that it contains anything except brown paper?

A. Not from my own knowledge, only from what is marked on the outside of the package.

Mr. Manager McMAHON. I will say to the gentlemen that if they desire us to be put to the trouble, we can identify all these way-bills as being written by the witness.

Mr. CARPENTER. We do not want to put you to any trouble whatever.

Mr. Manager McMAHON. Is it conceded that he will testify to that?

Mr. CARPENTER. Draw up the stipulation you want me to sign and I will do it. I have stated over and over again that it is conceded.

The PRESIDENT *pro tempore*. The witness is discharged.

E. V. SMALLEY sworn and examined.

By Mr. Manager McMAHON:

Question. Where do you now reside?

Answer. In Philadelphia.

Q. What is your present occupation?

A. I am a journalist.

Q. For what newspaper do you write?

A. For the New York Tribune.

Q. How long have you been in that position?

A. Six or seven years, I think, connected with the Tribune.

Q. In 1872 where were you located?

A. In Washington.

Q. What department of the correspondence of the New York Tribune did you have; the whole or any particular department?

A. Mainly matters connected with the House of Representatives; the proceedings of the House.

Q. How about military affairs?

A. I cannot say that I had charge of that department, but most of the dispatches on that subject were written by me.

Q. What position did you hold as well to any committee in the House that year?

A. I was at that time clerk of the Military Committee of the House.

Q. Do you remember an article that appeared in the New York Tribune making certain charges in regard to the tradership at Fort Sill—say, February 15, 16, or 17, 1872?

A. Yes; I wrote a dispatch, I think, on the 15th of February, 1872, on that subject.

Q. Have you looked at that article?

A. Yes, sir.

Q. Do you remember the article?

A. I remember the article.

Q. From whom did you obtain the information upon which those charges were made.

Mr. CARPENTER. That we object to. A regular journalist is not bound to furnish any authority whatever for his statements.

Mr. Manager McMAHON. That is his privilege.

Mr. CARPENTER. And therefore you should not violate it by asking him where he got his information.

Mr. Manager McMAHON. If that is the only ground we waive the question. (To the witness.) After the article appeared in the New York Tribune, state whether any action was taken by the Secretary of War in regard to it, and what that was? Did any papers come to you out of the usual course of business?

A. No papers came to me. The order that has been referred to in this trial upon the subject of post-traders was sent to our office to Mr. White, who was in charge of the office. I saw the order that evening.

Q. (By Manager McMAHON.) What order do you refer to now, the order of March 25 or the letter to General Grierson?

A. I refer to the order of March 25.

Q. Do you remember of General Hazen having testified before the Military Committee?

A. I do.

Q. Do you remember as a fact that his testimony as given before the Military Committee was reported in the New York Tribune?

Mr. CARPENTER. I object to that. Produce the Tribune. That is the best evidence.

Mr. Manager McMAHON. I do not propose to prove its contents. I only ask as a matter of fact; but I waive the question to get along more speedily. (To the witness.) Did General Belknap know that you were a correspondent of the New York Tribune here?

A. I have no doubt that he did.

Q. (By Mr. Manager McMAHON.) Did he seek any interview with you in regard to the publication of this article of the 15th of February, 1872?

A. No; I do not think he sought any interview on the subject.

Q. Did you have any conversation with him?

A. I have been reminded to-day of a circumstance which I had forgotten: That on one occasion, being at the War Department on some other business—I think committee business—General Belknap invited me to ride up to the Capitol in his carriage and at that time the subject was mentioned, I think, but it had nearly escaped my mind.

Q. Now, state what took place between you at that time?

A. I cannot state the conversation. There were two other persons in the carriage, one I think the chief clerk of the War Department, and I remember the circumstance chiefly not from any conversation but from the fact that the carriage was very small and two of the gentlemen were very large, and we had some apprehension that we should not get up Capitol Hill.

Q. Was this article in the New York Tribune the subject of conversation?

A. I cannot testify positively to the conversation. I think some reference was made to it.

Q. Was any inquiry made of you in regard to the authorship of the article?

A. I think not.

Q. Was any inquiry made of you with a view to looking after the abuses of this matter, as to where you got your information, where it came from?

A. I have no recollection.

Q. About how many days was it after this article had appeared in the Tribune?

A. I think it must have been a week or two. I think it was shortly before the order of March 25 was issued.

Q. You remember the fact, I believe, that General Hazen was a witness before the Military Committee?

A. I do.

Q. Where did the Secretary of War go at that time you were riding toward the Capitol?

A. He came to the Capitol; we all got out in front of the Senate wing, I think.

Q. Did he go before the Military Committee that day?

A. I think not.

Mr. Manager McMAHON. That is all.

The PRESIDENT *pro tempore*. Do counsel desire to put any questions to the witness?

Mr. CARPENTER. We do, if anything has been testified to by this witness; but we do not understand that anything has been.

Mr. Manager McMAHON. We sometimes miss it.

Mr. CARPENTER. I will act on my own assumption that there has not been anything proved, and I will not cross-examine.

The PRESIDENT *pro tempore*. The witness is excused.

LEONARD WHITNEY sworn and examined.

By Mr. Manager McMAHON:

Question. What is your occupation?

Answer. I am manager for the Western Union Telegraph Company.

Q. How many years have you occupied that position?

A. Some four or five years; since 1871.

Q. Have you been subpœnaed to bring with you the telegrams passing between Washington and New York and between Caleb P. Marsh and W. W. Belknap?

A. Yes, sir.

Q. Have you made search for those telegrams?

A. I have.

Q. How far back have you the telegrams?

A. Only as far back as June, 1873.

Q. Why have you no others?

A. They have been destroyed in the regular course of our business.

Q. What is your usual custom in the office in regard to keeping old dispatches?

A. Our rule has been to retain dispatches for two years. After that they can be destroyed.

Q. Now open your package and see what dispatches you have from Washington to New York, passing between Mr. Marsh or R. G. Carey & Co. and W. W. Belknap.

A. Before I do so I wish to state that I cannot produce these telegrams unless I am required to do so by the court; and I respectfully submit to the court that they are privileged communications, and I ought not to be required to produce them.

Mr. Manager McMAHON. The court can settle that question very shortly.

The PRESIDENT *pro tempore*. The Chair will submit the question to the Senate, Shall the witness produce the telegrams?

The question was decided in the affirmative.

The PRESIDENT *pro tempore*. The witness will produce the telegrams.

Mr. SHERMAN. I ask the Chair if counsel will not be expected to specify the particular telegrams called for?

Mr. Manager McMAHON. I will state to the Senator that we have been unable to see them and know what they are. We have certain dates about which we have particularly inquired; but the witness would no more show them to us as individuals than he would to the Senate, except on the vote of the Senate, and we do not know what he has.

Mr. SHERMAN. The questions will disclose what is wanted, I suppose.

Mr. Manager McMAHON. Yes, sir.

Mr. CARPENTER. If the witness has any telegrams signed by Belknap, they are competent evidence.

Mr. Manager McMAHON. There may be some that may have been delivered to Belknap.

Mr. CARPENTER. That would not make them evidence against Belknap.

Q. (By Mr. Manager McMAHON.) Have you the dispatches arranged in order?

A. In chronological order.

Q. I want you first to take the dispatches passing between Washington and New York, and those that do not apply to them to lay aside.

A. The dispatches are all in chronological order, no matter between what points they pass.

Q. I cannot help that; just lay them aside.

A. Do you want me to separate them?

Q. Yes, sir. I can give you, to start on, a date, about November 1, 1870. Look at that time.

A. I have no dispatches further back than 1873.

Q. From what date—in June, 1873?

A. The first is dated June 10.

Q. What is that dispatch?

A. It is a skeleton of a dispatch addressed to General Belknap, and signed Henry A. Taylor.

Q. We do not care about that. Now pass to the date of November 3, 1873, and see if you have a dispatch of that date?

A. I have.

Q. What is that dispatch; from whom to whom?

A. It is addressed to Hon. George H. Pendleton, New York Hotel, New York, signed W. W. Belknap.

Q. Look at that. [Handing a paper to the witness.] I do not care for the other one; it has no connection with this case. What is that dispatch which I show you?

A. This is a skeleton of a dispatch received on November 3, to W. W. Belknap, signed C. P. Marsh.

Q. Sent from New York on what date?

A. November 3, 1873.

Mr. CARPENTER. That is not offered in evidence, of course.

Mr. Manager McMAHON. Not the dispatch itself; simply the fact that the dispatch passed.

Mr. CARPENTER. I should like to see it. [The dispatch was handed to Mr. CARPENTER.]

Mr. Manager McMAHON, (to the witness.) Turn now——

Mr. CARPENTER. One moment. Let me ask a question about this.

Mr. Manager McMAHON. Certainly.

Q. (By Mr. CARPENTER.) Do you know of your own knowledge anything about this.

A. I know that it is a skeleton kept on our files of a message received by the printing instrument, the printed copy of which was delivered.

Q. Whose handwriting is this?

A. That is the writing of the clerk in the operating-room.

Q. Do you not know anything about it yourself?

A. I did not receive it myself.

Q. You do not know anything about it except that you found it?

A. Only I know that it is on our files in the regular course of business.

Q. You do not know whether what it says is true or not?

A. It does not say anything.

Q. What does it amount to in your opinion?

A. I should have to explain. The original message was received on our printing instrument——

Q. Do you know that of your own knowledge, or do you only assume that it is all right because you find it in the office in your usual course of business?

A. I did not receive the message. I know as manager of the office that this is the regular skeleton copy of such a message.

Q. That is to say, if a message had come through, you think that skeleton would have been kept?

A. Yes, sir.

Q. And it might have been put there if it had not come through?

A. No, sir; it could not have been.

Q. Why?

A. Only by deliberate design on the part of the clerk.

Q. Deliberate design on the part of the clerk could have put it there without a message. You did not receive it; you did not know anything about the deliberate design of the clerk?

A. No.

Mr. CARPENTER. I object.

Q. (By Mr. Manager McMAHON.) In whose handwriting is that; do you know?

A. I cannot say in whose handwriting it is. I am not sure whether we have the clerk now in the office; but I think we have.

Mr. Manager McMAHON. Keep that; put it aside, and when you go home this evening, mark on it the clerk's name in whose handwriting it is.

Mr. CARPENTER. Then you do not consider it as offered at present?

Mr. Manager McMAHON. We do not offer that at present. (To the witness.) Now look at the date of about the 9th or 10th of April, 1874.

A. I have one of April 9 and one of April 10.

Q. (By Mr. Manager McMAHON.) Did they pass between General Belknap and R. G. Carey & Co. or C. P. Marsh?

A. No, sir.

Q. Let me see them and I can tell better. We do not want to get into your secrets. [The dispatches were handed to and examined by the manager.] I do not care about that. Now look at the date of October 8 or 9, 1874.

A. I have a message here, but I am unable to say whether the date is the 9th or 19th.

Q. Let me see it, and I will see whether it bears on the case. [The dispatch was handed to the manager and examined by him.] I do not care about that. Now look about the date of May 24 or 25, 1875.

A. I have one of May 25, 1875.

Q. Let me see it. [The dispatch was handed to and examined by the manager.] I do not care about that. Now look at the date of November 7 or 8, 1875.

A. I have one of November 7.

Q. Let me see it before reading it. [Dispatch handed to and examined by the manager.] That I do not care about. What I want from you are the dispatches, if you have any, or skeletons, that passed between New York and Washington between W. W. Belknap and R. G. Carey & Co., or Caleb P. Marsh.

A. I shall have to look for them.

Q. Look them over and come back on Monday, making search in the mean time. [Handing papers to the witness.] Look at these four papers and see whether they passed through your office. These are dispatches, but I do not want to introduce them all now. I want them identified. Did these pass through your office?

A. [After examining.] I presume they did.

Q. In whose handwriting are they?

A. These two I should say are in the handwriting of Mr. Belknap.

Mr. Manager McMAHON. I offer them in evidence.

Q. (By Mr. CARPENTER.) How did they come out of your office.

A. I presume they were produced in answer to a subpœna before the Judiciary Committee.

Mr. Manager McMAHON. I offer these, and ask that they be read.

The Chief Clerk read as follows:

WASHINGTON, *February* 20, 1874.

To C. P. MARSH,
Care of Herter Bros., 877 Broadway, N. Y.:
Letter by mail to-day. You must come.

WM. W. BELKNAP.

—

WAR DEPARTMENT,
Washington, D. C., May 31, 1875.

To C. P. MARSH,
Care 120 Front street, New York:
Leave here Tuesday evening. Will be at St. James Hotel, Wednesday.

WM. W. BELKNAP.

Q. (By Mr. Manager McMAHON.) Identify the others at present as having passed through your office and been produced; I do not care to use them now.

[Two dispatches were identified by the witness and marked.]

Q. These two dispatches did pass through your office?

A. Yes, sir.

Mr. CARPENTER. What dispatches are those?

Mr. Manager McMAHON. The other two. We simply have them identified now. (To the witness.) On Monday, Mr. Whitney, you will have the dispatches assorted and select those passing between Caleb P. Marsh or R. G. Carey & Co., of New York, and W. W. Belknap, in the city of Washington.

The WITNESS. Is that all for to-day?

The PRESIDENT *pro tempore*. Are the counsel through?

Mr. CARPENTER. I understand that the managers dismiss him until Monday and propose to go on with him then. We shall reserve our cross-examination till they are through.

WILLIAM T. BARNARD sworn and examined.

By Mr. Manager McMAHON:

Question. What position do you occupy?

Answer. I am a clerk in the War Department.

Q. What relation did you sustain to Mr. Belknap when he was Secretary of War?

A. Part of the time I was his private secretary.

Q. For how long? Give the dates.

A. From April 1, 1873, until his resignation.

Q. You were his confidential clerk, were you not?

A. Yes, sir.

Q. You had charge of his letter-books as well?

A. I had charge of his private letter-books, except those relating to his personal business. Those I had not.

Q. At what season of the year does the Secretary generally make his trip to West Point?

A. He generally goes there about the 27th or 28th of May.

Q. About how long does he remain?

A. Generally about ten days.

Q. Were you ever with the Secretary of War at West Point?

A. Yes, sir, on several occasions.

Q. In what months?

A. I think each time in June.

Q. The early part of June or the latter part of June?

A. The early part of June.

Q. Were you there with him in June, 1872?

A. I think I was.

Q. Did you go with him from Washington to New York?

A. That I do not recollect.

Q. Were you attending at West Point by virtue of your relation to him?

A. I was attending by virtue of my relation to the War Department as chief of the Military Academy division at that time.

Q. Do you remember the fact that he was there in June, 1872?

A. I am quite positive of it.

Q. About how long did he stay that year, 1872?

A. That I cannot tell you.

Q. About how long did the exercises last?

A. They generally close about the 15th of June.

Q. Who was at West Point of the acquaintance of Mr. Belknap at that particular time besides you?

A. I do not know who his acquaintances were.

Q. Were Mr. Marsh and his wife there?

A. Mr. and Mrs. Marsh were at West Point in 1872 or 1873; I will not say which.

Q. Were they there at the time Mrs. Bower was there?

A. Yes, sir.

Q. Were they there together before they made their trip to Europe?

A. I think so.

Q. Do you remember at what season they went to Europe, 1872 or 1873?

A. I do not.

Q. How long did Mr. Marsh and his wife remain at West Point then?

A. That I do not remember.

Q. A day or two days?

A. Mrs. Marsh remained longer; Mr. Marsh came up occasionally, I believe.

Q. Came up from New York City?

A. From New York.

Q. About how many times during that period did Mr. Marsh come up from New York City?

A. I cannot tell you. I took no notice of his movements.

Q. Was he engaged in business in New York at that time?

A. I understood so.

Q. That was in the early part of June, 1872?

A. The fore part of June, 1872 or 1873; I do not remember which year.

Q. It was the same time that Mrs. Bower was there prior to their trip to Europe, whenever that was?

A. Yes, sir.

Q. Do you remember the fact that shortly after they had been there together, they went to Europe together?

A. I do not know that fact.

Q. What do you mean to say when you say you do not know that fact?

A. I heard that Mr. Bower and Mrs. Marsh went to Europe together, but I do not know it.

Q. (By Mr. CARPENTER.) That is, you did not go?

A. I did not go and did not see them start.

Q. (By Mr. Manager McMAHON.) Did you hear conversations before they went to Europe about the plan of going to Europe?

A. I may have heard conversations, but I cannot recollect them now.

Q. I only want to refresh your recollection as to whether you do not know that they went to Europe, because the matter was talked of and arranged at West Point while you were there?

A. I heard conversations about their going to Europe, I believe.

Q. Were you there in June, 1873?

A. Yes, sir.

Q. Was Mr. Belknap there in 1873?

A. Yes, sir.

Q. Was that the year in which he delivered the address; he delivered an address there upon one occasion?

A. I think he delivered the address to the graduating class every year that I was there.

Q. Have you any recollection of what day the address was delivered upon?

A. I have not at this time.

Q. Would it be about the second week in June generally?

A. Yes, sir.

Q. He delivered the address at each time at West Point to the graduating class?

A. When I was there.

Q. Which would come in the second week in June?

A. About.

Q. When you went through New York and stopped at New York, at what hotel did you put up?

A. On one occasion I put up at the Fifth Avenue Hotel; on other occasion I put up at the St. James.

Q. Where did General Belknap put up or stop?

A. I do not know where he always stopped; he stopped with me once at the St. James; I think, usually, at the Fifth Avenue.

Q. Have you met Mr. Marsh in the War Department?

A. I met Mr. Marsh in the War Department on one occasion, I believe?

Q. What date was that?
A. I do not remember the date.
Q. About what year?
A. I think it was in 1874; it was the year that General Belknap made his southern inspection.
Q. Had General Belknap just then returned from a tour to the southern posts?
A. Shortly before that.
Q. Where did the interview take place between Mr. Marsh and General Belknap?
A. In General Belknap's ordinary office.
Q. Were you present during the conversation?
A. Not all of it; I came in and went out, I believe, during that time.
Q. Did you hear any of the conversation?
A. I may have heard a small portion of it.
Q. What did Mr. Marsh come over to see the General about?
A. That I do not know.
Q. Did you get no impression from hearing the conversation?
A. None whatever.
Q. You did not know what they were talking about?
A. No, sir.
Q. Have you seen letters directed to the Secretary of War from Mr. Marsh?
A. Only one.
Q. What one was that?
A. A letter that, I think, was read here to-day or yesterday.
Q. What do you know about the private letters of a semi-official character that belonged to General Belknap being delivered to him about the time he went out of office?
A. By General Belknap's direction, before he ceased to be Secretary of War, I put together all his private letters and private papers and his letter-books which were considered private, and a day or two after his resignation I took them to his house myself.
Q. Did you look through those letters to see on what subjects they were?
A. Not one.
Q. You do not know what they referred to?
A. Only from the fact that they were put in the books as they were received; I put them in the books myself; sometimes I had to answer those letters, and at other times I had not.
Q. Were not these private or semi-official letters indexed?
A. It was my habit to index the books.
Q. Was that delivered to the General as well?
A. The index to the letters in each book was bound with the book.
No cross-examination.

Mr. MCCREERY. Mr. President, it becomes my mournful duty this evening to ask a short legislative session of the Senate. I move that the Senate sitting as a court do now adjourn.

The motion was agreed to; and (at four o'clock and forty-three minutes p. m.) the Senate sitting for the trial of the impeachment adjourned.

MONDAY, *July* 10, 1876.

The PRESIDENT *pro tempore*. The hour of twelve o'clock having arrived, the legislative and executive business of the Senate will be suspended and the Senate will proceed to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap.

The usual proclamation was made by the Sergeant-at-Arms.

The PRESIDENT *pro tempore*. The House of Representatives will be duly notified.

Messrs. LYNDE, MCMAHON, JENKS, LAPHAM, and HOAR, of the managers on the part of the House of Representatives, appeared and were conducted to the seats assigned them.

The respondent appeared with his counsel, Messrs. Blair, Black, and Carpenter.

The Secretary proceeded to read the journal of the proceedings of the Senate sitting on Saturday last for the trial of the impeachment of William W. Belknap.

Mr. SHERMAN. I move that the further reading of the journal be dispensed with.

The motion was agreed to.

The PRESIDENT *pro tempore*. The Senate is ready to proceed with the trial.

WHITELAW REID sworn and examined.

By Mr. Manager MCMAHON:

Question. Where do you reside?
Answer. In New York.
Q. What is and has been your occupation for the last five or ten years?
A. I am the editor of the New York Tribune.
Q. Do you remember an article that was published in your paper some time in February, 1872, in regard to the Fort Sill matter?
A. I do.
Q. Did that attract your attention at the time?
A. Yes, sir.
Q. You can state now whether at any time, personally or by letter, the Secretary of War addressed you any communication to find out your authority for the statements in that article?

Mr. CARPENTER. We object to that. We do not see what materiality that can have to anything in this case.

Mr. Manager MCMAHON. I should like to hear the objection stated.

Mr. CARPENTER. The objection is that it is wholly immaterial and irrelevant to this case.

Mr. Manager MCMAHON. I will add to that question the words, "or anything in connection therewith."

I do not know whether the Senators have all heard the question that I propose to propound to Mr. Reid, and under the apprehension that they have not, I will repeat it and then state the purpose; and I think stating the question and the purpose together will furnish about all the argument that the question needs to entitle it to be admissible. I put the question to Mr. Reid, whether, after the appearance of the article in the New York Tribune which we have all heard read, any communication was made to him by the Secretary of War, either personally or by letter, in regard to the authorship of that article or the person responsible for its statements, or any communication whatever in regard to that article. The answer of the witness is of course not yet given. We do not know at this stage of the objection whether the witness will say "yes" or will say "no;" and therefore the argument must be directed on the hypothesis that he may answer either way, and at this stage of the inquiry, if it is admissible in case he should answer either way, it is of course competent, and I think it is competent no matter how it may be answered. Why? Here is an article charging the existence of a grievance at Fort Sill, the payment of a tribute by one man to another for being kept in the place. We have already called Mr. Smalley, who wrote the article, and proved by him that no inquiry was made of him as to the authorship of that article, and that there was no general conversation had in regard to it. We now propose to go to the headquarters, to the fountain, and inquire whether anything was said to the editor of the paper in regard to this matter, and for this purpose I do not care what the answer may be. If the answer is "yes," we desire the communication, whatever it may have been. If the answer is "no," our argument will be, in my judgment, equally strong, if not stronger, than it would be if we had the direct communication.

Now, I will put it on the hypothesis that the witness will answer "yes." Are we not entitled to know what the Secretary of War said when such a thing as this was published? I need not argue that question. Suppose now that he will answer "no;" are we not entitled to a knowledge of the fact as we propose to prove it here, that, although these charges were publicly made in regard to the management of affairs at Fort Sill, the names having been given, the parties being specified, and one of the parties specified being, as we shall show, at that time an intimate personal friend of the Secretary of War, at no stage of the proceedings was any inquiry made by the Secretary of War from any person who would have any right to speak in regard to the source of the information of the facts stated in that communication? We draw our argument from that, and I have no objection to stating it. Our argument is this: that his conduct in that matter is the conduct of a guilty man; it is the conduct of a man who knows that the facts exist, of a man who knows all about the statements in the New York Tribune article, and he does not care to go to anybody to find out the authority.

Mr. CARPENTER. Mr. President, the rule of course must be the same here as it would be in the trial of any criminal case in a court of law; and is this Senate to establish the rule that, as often as a newspaper contains a libel upon an individual, that individual must go and shoot the editor, or must sue him for libel, or demand his authority for the article, or stand convicted of the charge? That is the question. They propose to convict this man of everything said in that article because he did not go and make a row about it, because he did not go and demand the authority upon which it was published, bring a libel suit, or shoot the editor. The man who is perfectly conscious of integrity in the matter never runs after such articles; at least there is no law that compels him to do so; and there is no law of presumption against him if he refuses to do it. I should be surprised to see any judicial court establish such a rule, and I should be anxious and curious to see how many of the Senators now sitting in the view of the Chair would be on their way for about five hundred editors within the next twenty-four hours. If it is a good rule against the Secretary of War, it is a good rule against any public man or any private citizen, and as often as any one of you, Senators, see a libel upon you in regard to any subject, you must "jump for" the editor or you confess your guilt.

Mr. Manager MCMAHON. Let me put a question to you, Mr. Carpenter; suppose the witness answers "yes." He has not answered the question yet as to whether he held any communication.

Mr. CARPENTER. The manager has stated his object fully and frankly. He expects to show that Mr. Belknap did not say anything about it, and from that fact he says he will argue the conclusion that Mr. Belknap knew that the charges were true, and therefore did not want to pursue any man, did not want to know who the author was, or anything of the kind. The argument is just as strong that he knew it was all false as that he knew it all to be true; and the man

who sits undisturbed under a libel is as likely to be an innocent man as a guilty one. Junius once said a good thing applicable to this precise point. Speaking of a certain man, he said that he was not only nice on the point of honor, but that he was absolutely sore.

Mr. CONKLING. May we hear the question read?

The PRESIDENT *pro tempore*. The reporter will read the question.

The Official Reporter read from his short-hand notes as follows:

Q. You can state now whether at any time, personally or by letter, the Secretary of War addressed you any communication to find out your authority for the statements in that article or anything in connection therewith.

Mr. EDMUNDS. May I ask a question of the managers without putting it in writing? I wish the managers to say whether the counsel on the other side has stated correctly the offer, which I did not hear, happening to be engaged at the moment, that what they expect to prove is that the Secretary of War did not address a communication to the editor.

Mr. Manager McMAHON. We expect to show that the Secretary of War in person did not, but that his next friend in this transaction probably did.

Mr. CONKLING. Who was the next friend?

Mr. Manager McMAHON. He has already testified.

Mr. CONKLING. I did not hear who it was.

Mr. Manager McMAHON. General McDowell.

The PRESIDENT *pro tempore*. Shall the interrogatory be admitted?

The question was decided in the negative.

The PRESIDENT *pro tempore*. The objection is sustained.

Q. (By Mr. Manager McMAHON.) Did you receive any communication from General McDowell in regard to this article in the New York Tribune?

Mr. CARPENTER. To that we object.

Mr. Manager McMAHON. I simply want the fact; I do not ask for the letter.

Mr. CARPENTER. I object to the question.

Mr. Manager McMAHON. I propose to have General McDowell recalled.

Mr. CARPENTER. I object to the question.

Mr. Manager McMAHON. Mr. President, I simply propose to show that at the time this thing occurred a communication was addressed, and to call for that and have it handed to me. Then I propose to have General McDowell recalled, and to refresh his recollection by the contents of that letter. I do not propose to offer it now.

Mr. CARPENTER. The manager seems to want some information from the witness privately in regard to what he will do about some other witness. I have no objection to their retiring and having a consultation, but I object to the question propounded as evidence in this cause.

Mr. Manager McMAHON. Let me ask the gentleman before he sits down, am I not entitled to prove a certain letter which I desire to use in the progress of this case, and to identify it as the letter which the witness has received from a certain person in due course of mail?

Mr. CARPENTER. If you want me to decide that question, I say, as applied to this case, no.

Mr. Manager McMAHON. Then it is because you are counsel for the defendant in this particular case.

Mr. CARPENTER. No; it is because I am a lawyer and talking law.

The PRESIDENT *pro tempore*. The Chair will submit the question to the Senate: Shall the interrogatory be admitted?

Mr. Manager McMAHON. I ask to have the question reported.

The Official Reporter read the question from his short-hand notes as follows:

Q Did you receive any communication from General McDowell in regard to this article in the New York Tribune?

Mr. CARPENTER. If any human being can tell how the answer to that, whether it be yes or no, is any evidence in this case, I should like to hear it stated. We are not bound by anything that McDowell did. We are not bound by anything that he refused to do.

The PRESIDENT *pro tempore*. Shall this interrogatory be admitted?

The question being put, there were on a division—ayes 22, noes 14; no quorum voting.

Mr. EDMUNDS. Let us have the yeas and nays.

Mr. SHERMAN. Let us have another division. I did not vote.

Mr. EDMUNDS. Very well. If there is a quorum here, let us divide again.

The PRESIDENT *pro tempore*. The Chair will put the question again, if there be no objection.

The question being again put, it was decided in the affirmative, there being on a division—ayes 23, noes 15.

The PRESIDENT *pro tempore*. The objection is overruled.

Q. (By Mr. Manager McMAHON.) Now state, Mr. Reid, whether you received in March, 1872, a communication from General McDowell in regard to this New York Tribune article?

A. I did.

Q. Have you the letter with you?

A. I have it.

Q. Please produce it, hand it to the Secretary, and let him mark it.

[The witness produced the letter, and it was marked "W. R. McD."]

Mr. Manager McMAHON. That is all, Mr. Reid.

The PRESIDENT *pro tempore*. Do the counsel for the respondent desire to put any questions to the witness?

Mr. CARPENTER. No, sir. I ask for the reading of two telegrams, one from General Sherman and the other from General Sheridan, for the purpose of making a suggestion to the court.

The PRESIDENT *pro tempore*. The telegrams will be reported.

The Chief Clerk read as follows:

[Telegram.]

Mr. FRENCH,
Sergeant-at-Arms of Senate:

General Sheridan telegraphs that he is summoned as a witness. You know that his presence at Chicago at this time is absolutely necessary. Human life depends upon his wise action. Consult counsel and see if you cannot take his deposition at Chicago. If his presence be absolutely necessary, can it be deferred a few days? Advise me to-day if possible, as otherwise he may leave Chicago when his presence there is absolutely needed.

W. T. SHERMAN, *General.*

[Telegram.]

J. R. FRENCH,
Sergeant-at-Arms, United States Senate, Washington:

Your dispatch relative to my attendance as a witness at the impeachment trial has been received, and if necessary I will be in Washington Wednesday morning; but I have so many things to do in connection with Indian matters on the frontier that I would be scarcely justified in leaving here at this time under any circumstances. If arrangements could be made to take my testimony here the public interest would be benefited. Please let me know if this cannot be done.

P. H. SHERIDAN,
Lieutenant-General.

Mr. CARPENTER. In consequence of those telegrams, and not wishing to interrupt the public service unnecessarily, we have agreed, if the court will permit us to let it go upon the record, as follows:

I. It is admitted that Lieutenant-General Phil Sheridan would, if present, testify to the good official character of the respondent while Secretary of War.

II. That in regard to all the applications made for leave to sell liquors at the military posts the matter was referred by the Secretary of War to him, and by him investigated and reported on, and his report in all cases was adopted by the Secretary of War.

III. And that a part of a letter from him, Sheridan, to the Secretary of War dated March 29, 1872, may be read in evidence and that the same, and said admission, shall be taken and regarded as testimony in this cause with the same effect as though General Sheridan had appeared and testified to the same effect.

It is understood of course that all these different points are subject to the objection that they are irrelevant if the counsel on the other side chooses to raise that objection.

Mr. Manager McMAHON. Or incompetent.

Mr. CARPENTER. Or incompetent.

Mr. Manager McMAHON. We admit that he would be asked these questions and would answer in that way, provided they were competent or material.

Mr. CARPENTER. Exactly.

CALEB P. MARSH called and examined.

By Mr. Manager McMAHON:

Question. Where do you now reside?

Answer. In New York.

Q. How long have you resided there?

A. About eight years.

Q. State the business or the different kinds of business in which you have been engaged in New York City since living there.

A. I was for about four years in the furniture business, manufacturing, and am now in the tea-importing business.

Q. Were you conducting business in your own name or with other persons; and, if so, give the name or names of the firms to which you belonged.

A. In the furniture business the firm was Herter Brothers, and in the tea-importing business, in which I am now engaged, the firm is R. G. Carey & Co.

Q. How long has the firm of R. G. Carey & Co. existed?

A. Two years, and a little over.

Q. Did you go out of the firm of Herter Brothers when you went into the firm of R. G. Carey & Co.?

A. I did.

Q. How long were you in the business of Herter Brothers?

A. I should think four years.

Q. Where did you reside before you lived in New York?

A. In Cincinnati.

Q. What business were you engaged in there, and with what firm?

A. The hardware business—Tyler, Davidson & Co.

Q. When did you first become acquainted with General W. W. Belknap, and where?

A. It must have been in the summer of 1870.

Q. Where?

A. In Washington. I only know, not by recollection, but by a letter that has been shown me. The first interview, if I may be allowed to explain——

Q. Presently we will come to that. Aside from that letter, what is

your recollection as to the first place at which you ever met General Belknap?

A. Aside from my recollection being refreshed by that letter, you mean?

Q. Yes, sir.

A. I should have said that the first time I saw him was at my house in September, 1870.

Q. At what particular occasion was it that he was there at your house in September?

A. His deceased wife and his present wife were at my house spending some time in September and he came there to take the two sisters to Washington.

Q. And you think, aside from your recollection as refreshed by the letter, that was the first time you met him?

A. I should have said so before seeing the letter.

Q. Had you met him at Long Branch before he came up to your house?

A. I think not.

Q. How long had you been acquainted with his second wife and his present wife before you became acquainted with him?

A. I should say five or six years, perhaps seven; I am not certain.

Q. How well acquainted had you been with them? Was it a casual acquaintance or an intimate acquaintance?

A. It was rather a casual acquaintance with the deceased Mrs. Belknap, but an intimate acquaintance with the present Mrs. Belknap.

Q. Where have you kept your money account in New York City in the last six or eight years?

A. In the National Bank of Commerce.

Q. Of New York?

A. Of New York.

Q. Up to last December state whether you had sent to the Secretary of War at Washington City different sums of money, in the first part of that time quarterly, and in the latter part of it semi-annually; and if so, state how much you sent to him, how you sent it, and give us the facts connected therewith.

A. The question is so long that I do not know that I can answer it.

Q. Begin at this part of it: whether from, say, November, 1870, up to December, 1875, you sent sums of money to the Secretary of War?

A. After November, 1870, up to December, 1875, I sent sums by express to the Secretary of War.

Q. Sums by express?

A. Sums of money by express.

Q. Did you send sums of money by certificate of deposit also?

A. I did.

Q. Have you any distinct recollection as to how many occasions you sent the money by express and how many by a certificate of deposit?

A. I have not. I have only a general recollection; but I should say oftener by express.

Q. State whether at other times you paid the Secretary of War money personally.

A. I did, one or more times.

Q. Where?

A. In New York.

Q. When you paid him in New York did you pay him in bank-bills, or in checks, or in certificates, or in what?

A. In bank-notes, I think, always.

Q. What was generally the amount of those payments that you made to him?

Mr. CARPENTER. The witness has said nothing about any payments.

Mr. Manager McMAHON. He says he has paid sums of money.

Mr. CARPENTER. He says he has sent sums of money to the Secretary of War.

Mr. Manager McMAHON. We shall not quarrel about it; we need not call it a payment. (To the witness.) In what amount were the sums of money that you delivered to him, by express or by certificates, or in person, generally?

A. I did not deliver the money to him; I delivered it to the express company.

Q. It is the same thing.

A. Generally $1,500, I should say.

Q. Was it in regular or irregular installments?

A. For the first year and a half or two years, I think it was quarterly.

Q. How much quarterly?

A. Fifteen hundred dollars.

Q. After that how much?

A. The same amount, semi-annually.

Q. [Handing the certificates of deposit produced by Richard King.] Look at these certificates of deposit and say whether they are papers that passed through your hand.

A. They have my indorsement.

Q. To whom did you indorse them?

A. My indorsement is:

Pay to the order of W. W. Belknap.

C. P. MARSH.

Q. How did you transmit those certificates of deposit to him?

A. I think by mail.

Q. When you sent money to him by express, state whether you did it upon your own motion or by direction from him.

A. By direction from him usually; I do not know but always, and yet I am not certain.

Q. State whether you have any of the letters that passed between you and him.

A. I have not.

Q. Any of the telegrams?

A. I have not.

Q. What became of your letters?

A. It was my habit to destroy them.

Q. State now, generally, whether you have any letters at all which you received at any time in the last six years from General Belknap.

A. I have not.

Q. Give us, then, about the wording of one of those letters directing you to send money to him by express.

A. His letters?

Q. Yes, sir; give us about the substance of one of his letters.

Mr. CARPENTER. The witness has not said that he ever had any such letters. I think you had better not lead this witness.

Mr. Manager McMAHON. No; I think he has said it. I will repeat the question, there being a misapprehension. (To the witness.) When you sent money by express how was it that you selected the express as the mode of forwarding the money to him?

A. When I had money to send to him it was my habit to write to him and ask him how it should be sent.

Q. (By Mr. Manager McMAHON.) What answer would you receive?

A. He would tell me how to forward it.

Mr. Manager McMAHON, (to the counsel for the respondents.) Gentlemen, we have served a notice upon you to produce the letters which have passed between these parties, and, of course, we are ready now to receive them, or to offer evidence of their contents.

Mr. CARPENTER. Where is the notice?

[Mr. Manager McMAHON handed a paper to Mr. Carpenter.]

Mr. CARPENTER. This notice, as far as it calls for letters touching the management of affairs at Fort Sill, calls for what were official letters, and may be found at the War Department. We have no other letters called for by the notice.

Mr. Manager McMAHON. With permission, Mr. President, I will ask the Secretary to read the notice.

The Chief Clerk read as follows:

Fourth. All letters, telegrams, and communications from said Caleb P. Marsh to you in regard to the appointment of post-trader at Fort Sill or elsewhere.

All letters from said Marsh to you concerning the management, conduct, or removal of the post-trader at Fort Sill.

All letters or telegrams from said Marsh to you in any way connected with the forwarding to you of money, certificates of deposits, drafts, &c.

All letters from said Marsh to you informing you of the state of accounts between him and yourself, particularly the letter informing him of a change in the amount of the annual payment to be made to you by him some time in the spring of 1872.

The time covered by this notice is from June 1, 1870, to March 2, 1876. The dates more particularly referred to are those specified in the seventeenth specification set forth in the fourth article of the impeachment articles filed against you.

Q. (By Mr. Manager McMAHON.) State again, Mr. Marsh, as near as you can recollect, the contents of the letter which you addressed to him in regard to the money that you had to forward to him.

A. I would state that I had a remittance for him and would ask how I should send it.

Mr. CARPENTER, (to Mr. Manager McMAHON.) Are you calling for the contents of any particular letter?

Mr. Manager McMAHON. All the letters at the time of the express shipments and of the sending of the certificates of deposit by mail.

Mr. CARPENTER. And the witness is to give the contents of all at once?

Mr. Manager McMAHON. I give him one sample. Proceed, Mr. Marsh, with your testimony.

The WITNESS. I would simply write to him that I had a remittance for him and ask him——

Mr. CARPENTER. I submit that that is too general and too leading. He should be confined to some specific letter and be asked to give the contents of it, and not asked in general as to what his habit was about writing the letters.

Mr. Manager McMAHON. We shall not quarrel about that. I will put a particular date. (To the witness.) Take the 1st of November, 1870, when it appears that a package was shipped, $1,500. What were the contents of that letter?

A. I do not remember at all.

Q. (By Mr. Manager McMAHON.) Do you remember the contents of any particular letter that you sent to him; that is, the substance?

A. I think that I have sometimes said, "I have a remittance"——

Mr. CARPENTER. That will not do. You may call his attention to a particular letter; then if we have it we will produce it; if we have not got it, you can prove its contents, but you cannot call a witness and drag him over the general character of a correspondence extending for years.

Mr. Manager McMAHON. I will put this preliminary question now, so that we may have the foundation all properly laid. (To the witness.) Did you ever send him money by express unless he had requested you to do so?

A. Never unless he told me how to send it, if you call that a request.

Q. (By Mr. Manager McMAHON.) Did you ever send him money by express unless upon his direction?

A. I think not.

Mr. CARPENTER. The last two questions have been asked and answered, but I protest against this method of examining the witness. There are reasons perfectly apparent to the counsel and to the court, why the rule of examination should be properly administered in this case, and the witness should not be led, and coaxed, and teased by questions, as he has been all the way through. The counsel is perfectly competent to put proper questions to the witness, without suggesting to him in every instance what he wants him to say. It is not the proper way, and it is not a fair way.

Mr. Manager McMAHON. Mr. President, it seems to me, Senators, that I have, in putting the questions to this witness, been unusually fair. It may be that I may misapprehend the situation. I am not endeavoring to lead the witness. I ask him this question, a question that calls for what is admitted to be true, "You have sent money to General Belknap." I have not asked him upon what account. He answers "Yes." I ask, "Did you ever send him that money by express," of which we have proof seven times, "except upon his direction?" He says "No." He then swears as a witness in this court that each time he addressed a letter to your client who sits there. We cannot afford in the trial of a case before so august a tribunal as this, to take the honorable gentleman's statement that no such letters are in existence in opposition to the oath of the witness who sits there.

Mr. CARPENTER. Does he swear they are in existence?

Mr. Manager McMAHON. He says they were delivered to your client, and if you do not produce them it is simply because they are destroyed; and if they were, as you say, official communications they had no business to be destroyed.

Mr. CARPENTER. They are not destroyed; they are on file. You have got one of them already.

The PRESIDENT *pro tempore*. Gentlemen will address the Chair.

Mr. Manager McMAHON. What we desire to prove is this: We may call his attention to the particular date, but we go further and ask, Was there a general form in which you sent them, or was there any particular letter of which you may remember the substance? The idea is that we have got to go through these fourteen different occasions when money was sent, and if he does not remember the contents of a particular letter, therefore it is not competent to testify to the contents of all of them as to his best impression! I understand that the rules of evidence are based upon a knowledge of human nature, upon a knowledge of the infirmities of human nature, and that a witness who has transacted business of this kind, when the documents are in the possession of the defendant, when he undertakes to state here the substance of their contents, is entitled to state it without saying that it was the contents of the letter of the 1st of November or the 6th of October or the 9th of October, 1874. I think I have said all upon this question that the occasion demands.

Mr. CARPENTER. I have nothing to say in reply to what the manager says. All I ask is that the court will enforce the rule for examining this witness. We all know what is expected of this witness. There is nothing secret about it. The fairest way would be to take Mr. Marsh to the beginning of this business and bring him down chronologically, and not hedge him in with little questions here and there and whenever he is led on with little answers then to snap upon him the narrow gauge.

Mr. Manager HOAR. I should like to inquire of the honorable counsel if he declines to produce any letters in response to our notice?

Mr. CARPENTER. I have already stated, and repeat, that the only letters called for in the notice that we know anything about are official letters on file in the Department, one of which we produced at your request the other day.

Mr. Manager HOAR. You can produce no letter in response to our notice except the one you refer to?

Mr. CARPENTER. We cannot. It is not contumacious. We have not got them and never did have them.

Mr. Manager McMAHON. That is a question. The witness says they were written, and they must either be in existence or they must have been destroyed. At this stage of the case that is the presumption of law.

The PRESIDENT *pro tempore*. The question objected to will be read by the reporter.

Mr. CARPENTER. We object to the manner, not to the particular question, for that has already been answered.

The PRESIDENT *pro tempore*. The managers will proceed.

Q. (By Mr. Manager McMAHON.) Now give us the contents, as near as you can remember, or the substance, of one of these letters without fixing the date.

Mr. CARPENTER. That we object to.

Mr. Manager McMAHON. That is the question I asked a while ago.

Mr. CARPENTER. The rule is perfectly well settled that if an instrument is called for and not produced they may prove the contents of it. There is no doubt about that; but to ask the witness what was the general substance of letters, without regard to date, is not proving any instrument whatever. I deny that you can take a witness up here and pull a drag-net over the correspondence of business men for years and ask "what was the general purport of your correspondence?" That will not do. That is too indefinite. They will have to introduce the particular letter, and if they do not have it they must account for its loss, either by them or by us, and they may then prove the contents of that particular paper; but having shown that a particular paper is lost they cannot ask the witness upon the general tenor of all these letters without regard to their date. When the question was put distinctly to this witness as to what were the contents of the letter which accompanied the first remittance, he said he did not remember. Now, if there is any other particular letter which they can locate in the mind of the witness and prove by him its contents, that of course is not objected to; but the question, "what is the general substance of letters," without regard to their dates, is not proving a particular paper, it is proving at large what was the substance of a general correspondence. That cannot be done. You must prove it by introducing every letter by itself. If you have not got the letter, then you must account for its loss and prove its contents, not by proving what was the general tenor of forty papers. It is for the court to say what the general tenor of them is, after they know each letter, and we are to have the substance of each letter as near as the witness can give it.

The PRESIDENT *pro tempore*. Shall this interrogatory be admitted?

Mr. CONKLING. I should like to inquire, if it is in order, whether it is the purpose of the managers, after the witness answers the question, to have him proceed and fix the date or leave it generally some date that he does not know?

Mr. Manager McMAHON. I propose, of course, after getting the contents to fix the date if he can; and, failing upon that, I propose to ask him further whether the letters were of a general class, similar in their character, with no distinct variation in the terms contained therein.

Mr. EDMUNDS. May I ask the manager a question without reducing it to writing? I should like to inquire whether this inquiry is intended to apply to any period of time before the first date fixed or after the last one?

Mr. Manager McMAHON. No, sir; only within the dates fixed in the articles.

The PRESIDENT *pro tempore*. The question is, Shall this interrogatory be admitted?

The question was determined in the affirmative.

Mr. Manager McMAHON. Now answer the question, Mr. Marsh.

The question was read by the reporter, as follows:

Q. Now give us the contents, as near as you can remember, or the substance, of one of these letters, without the date?

A. I have addressed him in this way on more than one occasion, I think, but I cannot fix any dates: "I have a remittance for you from the S. W." meaning the Southwest. "What shall I do with it?"

Q. (By Mr. Manager McMAHON.) After you had dispatched a letter like that, what letter would you get in return? Give us the contents of one of his letters that you can remember.

Mr. CARPENTER. I want formally to make the same objection. I suppose, of course, it will be overruled; but I want to make the same point here as upon the former question.

The PRESIDENT *pro tempore*. The Chair will take it as the sense of the Senate that the objection is overruled.

Q. (By Mr. Manager McMAHON.) Give us now the substance of one or more of his letters in reply to such a communication from you.

A. His replies were simply directions how to forward the money, as near as I can remember.

Q. When did you destroy these various letters that you had received from the Secretary of War? At what particular time?

A. It was never my habit to keep them.

Q. Is it not your habit as a business man to keep letters containing directions how to forward money?

A. I might have kept them for a few days possibly; I do not remember.

Q. Now state whether, after you would forward the money by express, you would communicate with the Secretary of War; and, if so, what inclosure, if any, you would send to him.

Mr. CARPENTER. I want to object again. The question is, what you would do after you had done so and so; no date, no time, no particular. I want at least that it shall appear on the record that I objected.

The PRESIDENT *pro tempore*. Shall this question be admitted?

The PRESIDENT *pro tempore* put the question, and declared that the noes appeared to prevail.

Several Senators called for a division.

Mr. Manager McMAHON. I think the managers may remove the objection by changing the form of the question. We withdraw it and put it in a different shape.

The PRESIDENT *pro tempore*. The question is withdrawn.

Q. (By Mr. Manager McMAHON.) State whether, after shipping the money to him by express, you informed him of that fact; and, if so, how.

Mr. CARPENTER. To that question we object.

The PRESIDENT *pro tempore*. Objection is made. The Chair will put the question on admitting the interrogatory.

Mr. CAMERON, of Pennsylvania. I ask for the yeas and nays on this question; I think it is a very important one, whether we are to

trust to the treacherous memory of a witness about transactions that transpired years ago. I think it is a very dangerous question, and I should like to have it decided by the Senate by the yeas and nays.

The PRESIDENT *pro tempore*. Debate is not in order. The Senator from Pennsylvania calls for the yeas and nays.

The yeas and nays were not ordered.

The PRESIDENT *pro tempore*. The question is on admitting the interrogatory.

The question was decided in the affirmative.

Mr Manager McMAHON. Now answer the question, Mr. Marsh.

The WITNESS. It was my custom, I think invariably, to send him the express receipt when I sent a remittance.

Q. (By Manager McMAHON.) How was that express receipt sent?

A. By mail.

Q. State whether you received any reply; and, if so, in what shape.

Mr. CARPENTER. No particular time I understand is alluded to?

Mr. Manager McMAHON. It is as to all these express matters.

Mr. CARPENTER. That we object to.

The PRESIDENT *pro tempore*. Counsel objects. The Chair will submit the question to the Senate.

Mr. Manager McMAHON. We are speaking about the express shipments alone.

The PRESIDENT *pro tempore*. Shall the interrogatory be admitted?

The question was decided in the affirmative.

The PRESIDENT *pro tempore*. The objection is overruled. The witness will answer the question.

The WITNESS. I have received from him the express receipt which I had sent him, indorsed on the back simply "O. K." I may have received acknowledgments in other forms, but I do not remember that form.

Q. (By Mr. Manager McMAHON.) When you delivered the money to the express company, at what office in New York City did you deliver it for shipment to Washington City?

A. As far as I can recollect, the Adams Express.

Q. What number in Broadway? Do you remember?

A. I do not; the down-town office.

Q. How far from Wall street?

A. It is close by.

Q. That is called "the down-town office?"

A. Yes, sir; the head office.

Q. In whose name as consignor were these shipments made from New York to Washington City by you?

A. In my own name, except in, I should say, two or three cases when I sent the money in the name of R. G. Carey & Co. I cannot tell how many cases; but I think two or three.

Q. You have referred now to one of your letters. "I have a remittance for you from the S. W.," meaning, as you say, the Southwest.

Mr. CARPENTER. I do not understand that he has said any such thing.

Mr. Manager McMAHON. O, yes.

Mr. CARPENTER. He says he would generally say, not referring to any one letter as counsel says, "I have a remittance from the S. W." Now counsel puts in his mouth as to one particular letter——

Mr. Manager McMAHON. I would rather have it that way if you insist on it.

Mr. CARPENTER. Have it any way you please; but do not mislead the witness about it.

Q. (By Mr. Manager McMAHON.) You stated that you generally informed him in these letters that you had a remittance for him from the "S. W.?"

A. I do not know that that was general. I have done that several times.

Q. State whether you ever had any other business transactions with the Secretary of War except the transactions that you refer to as "from the S. W."

Mr. CARPENTER. That gives nobody any information of what transactions are referred to by the managers. There may be such a complete understanding between the manager and the witness that they understand it, but not having been admitted to that conference I do not know what transactions he is referring to by the question. I have heard nothing about any transactions in the Southwest yet.

Mr. Manager McMAHON. We cannot get everything in at once. We are endeavoring to do it as expeditiously and conveniently for the court as possible; but sometimes one man must go through the door before the other, and one fact must get in ahead of the other necessarily.

Mr. CARPENTER. The trouble is that you are not putting anything through the door.

Mr. Manager McMAHON. That is for the court to decide. The question that I put to the witness is this: Did you have any other business transactions with the Secretary of War except this that you referred to by the name of "S. W.," the Southwest?

Mr. CARPENTER. If anybody knows what that means, I do not.

Mr. Manager McMAHON. The witness knows, and I am endeavoring to get the truth out of him. The reference to the Southwest meant something, I suppose, and I want to find out now whether that was on the same account, "from the Southwest;" and then, if you will give me time and opportunity, I will show just what "the Southwest" is; but I must have time.

Mr. CARPENTER. The manager says he wants to get at the transactions that took place in the Southwest. We have heard nothing about any transactions in the Southwest; we have heard about remittances of money from New York here accompanied by certain letters. Now, he puts a question—and I would not be captious about the mere form of the question if I did not think it was substantial here—I understand from the managers proceeding here that he is endeavoring to avoid the transaction itself and to stick in the bark. If this is a straightforward, honest witness, indorsed by the House of Representatives, why do they not push him right into deep water and let us know what the facts are?

Mr. Manager McMAHON. I will simply say to the honorable gentleman that I think we are examining this witness on this side, and however limited our information may be upon the matter we understand probably how to put the case in evidence.

The PRESIDENT *pro tempore*. Counsel objects to the question. The question will be repeated.

Mr. CARPENTER. I withdraw the objection.

The PRESIDENT *pro tempore*. The objection is withdrawn.

The question was read to the witness, as follows:

Q. State whether you ever had any other business transactions with the Secretary of War except the transactions that you refer to as "from the S. W."

A. I never had any business transactions with him except sending him money, that I remember now.

Q. (By Mr. Manager McMAHON.) Money from what quarter?

A. Money that came to me from Fort Sill.

Q. In what part of the country is Fort Sill located?

A. I should say generally in the Southwest.

Q. Is Fort Sill the place to which you referred by using the letters "S. W.?"

A. It was.

Q. I understand you to say that when you forwarded the express receipts the Secretary would return them to you indorsed "O. K."

A. Sometimes.

Q. Do you remember any letter in which he made any inquiry as to what the meaning of "S. W." was in these letters of yours?

A. I do not.

Q. Take these certificates, again, [handing certificates of deposit produced by Richard King.] Have you any recollection about the giving of any one of these particular certificates, of the occasion why it was put into a certificate and not into money sent by express?

A. I should say it was according to General Belknap's directions.

Q. Do you remember any particular reason assigned, if there was any, in any letter to you?

A. I do not.

Q. I notice that upon the 9th of October, 1874, instead of issuing one certificate for $1,500 the bank issued two to you, one for $700, the other for $800. Have you any recollection about the division of that?

A. I have not.

Q. They are of the same date.

A. So I see.

Q. One of them appears to have been indorsed to his wife and the other seems to have passed through the hands of "Horace S. Leland & Co."

A. It is not his wife.

Q. Who is "Anna M. Belknap?"

A. I do not know.

Q. Not his wife?

A. Not his wife.

Q. What are the initials of General Belknap's present wife?

A. I think "A. T."

Q. Have you any information as to who "Anna M. Belknap is?"

A. I have not.

Q. When you inclosed one of these certificates of deposit to him, state what was the substance of the letter which you did send to him accompanying the certificate.

Mr. CARPENTER. Mr. President, I want to submit whether that should not be confined to some particular certificate?

Mr. Manager McMAHON. That is the express question exactly.

Mr. CARPENTER. I do not understand it so. I understand the question is what you would have done.

Mr. Manager McMAHON. No.

Mr. CARPENTER. Let the question be read.

The question was read by the Official Reporter, as follows:

"Q. When you inclosed one of these certificates of deposit to him, state what was the substance of the letter which you did send to him accompanying the certificate."

Mr. CARPENTER. I insist on knowing which particular certificate he refers to before he proves the answer that he received.

Mr. Manager McMAHON. That is the identical question that has been settled by the Senate in the express matter.

The PRESIDENT *pro tempore*. The Chair overrules the objection. The witness will answer the question.

The WITNESS. I cannot state.

Q. (By Mr. Manager McMAHON.) Have you any recollection of the substance of any one of these letters?

A. I have given the substance of some.

Q. Yes, you have given the substance of the letters accompanying the express shipments. Now I want the substance of the letters accompanying the certificates?

A. I do not distinguish them.

Q. Do you mean to say that you generally made the same statement to him in a letter inclosing these, as you would when you shipped the money to him by express?

A. I should say so.

Mr. CARPENTER. The question is whether you have any distinct recollection about it?

The WITNESS. No, sir; I have not.

Q. (By Mr. Manager McMAHON.) Now, state to the court whether, when you sent these certificates forward by mail, you received any acknowledgment from him of their receipt.

A. I do not remember of any. I should say generally that he always acknowledged the receipt of remittances. That is my general recollection, but I do not remember any particular occasion.

Q. After you became acquainted with General Belknap in 1870, state how intimate you became with him and how well acquainted with him.

A. I have never seen him very often; I cannot tell, it is so long ago.

Q. What were the relations between you and him socially?

A. They were very friendly. He has been at my house in New York. That is years ago, not recently; not for the last two or three years.

Q. Has he staid at your house over night?

A. I could not say that he ever did positively. He may have done so.

Q. Have you visited him at his house in Washington?

A. You mean socially?

Q. Yes, sir.

A. On one occasion only, I believe.

Q. Do you remember at what time of the year the West Point commencement is held?

A. I do not.

Q. Do you remember being at West Point with Mrs. Marsh at any time when General Belknap was there?

A. I think I was, but I would not swear to it positively.

Q. What year do you think that was in?

A. It must have been three or four years ago.

Q. In what year did your wife go to Europe?

A. Eighteen hundred and seventy-two, I think.

Q. Does that refresh your recollection now as to the time that she was at West Point?

A. It may have been that year, but I am not positive.

Q. Who went with her to Europe at the time that she went?

A. Mrs. Bower.

Q. The present wife of the Secretary?

A. Yes, sir.

Q. Have you a recollection of being at West Point at the time General Belknap was there, immediately prior to your wife and Mrs. Bower going to Europe?

A. I have not. I have a recollection of being at West Point when they were there.

Q Were you at West Point more than once?

A. I do not remember.

Q. Have you been there at a time General Belknap was there, since your wife returned from Europe?

A. I should say no; but I am not positive.

Q. But you do remember being there once some years ago?

A. I do.

Q. Have you a recollection of your wife staying there for several weeks?

A. No, not several weeks.

Q. How long a time?

A. I cannot tell. I think she was there for perhaps a week or two; I am not at all certain of the time.

Q. How long did you remain at the visit you made?

A. I think a day or two at a time, perhaps. I am not certain even about that.

Q. State whether you went there, when you went up, more than once; or whether you went up, made one visit, and did not return?

A. I cannot tell you positively; but probably I was back and forth more than once.

Q. You have stated that you paid General Belknap money in New York. About how many times in New York?

A. I should say one or more times; I cannot answer any more positively.

Q. When you did not send him the money by express or send him a certificate of deposit, where did you pay what was coming to him?

Mr. CARPENTER. That we object to. We do not want an argument on the question.

Mr. Manager McMAHON. I will put the question in this form: When you did not send the money by express or by certificate, how did you pay it? Do you object to that?

Mr. CARPENTER. It is a little better than the other.

The WITNESS. I think on one occasion I bought a Government bond. As far as I now remember, on all other occasions I gave him the money in New York in person.

Q. (By Mr. Manager McMAHON.) In person?

A. I think so. If there was any other mode I have forgotten it.

Q. When you paid the money to him in person, did you take any receipt from him, or receive any receipt?

A. I did not.

Q. From what bank did you draw the money to ship to him to Washington City?

A. The bank where I kept my account—the National Bank of Commerce.

Q. From what bank did you generally draw the money when you paid it to him in person?

A. The same, I think, always.

Q. State whether upon any one occasion you sent him money or delivered it to him without drawing a check upon your bank for the amount?

A. I do not know that I have ever done so. It is possible, but I do not remember any such case.

Q. Do you know H. T. Crosby, of the War Department?

A. Yes, sir.

Q. Have you met him in New York City at any time?

A. I think he called at my house on one occasion to see General Belknap several years ago.

Q. I referred to it for that purpose, to find out whether that refreshed your recollection. He came to your house to see General Belknap who was stopping there at that time?

A. I think so.

Q. When you delivered this money in person to General Belknap, state what conversation passed between you and him as to the source from which this money came, upon what account it was? Just give us the conversation?

Mr. CARPENTER. When and where?

Mr. Manager McMAHON. On any one occasion that he remembers.

Mr. CARPENTER. Can you not come to some one occasion and give us that conversation?

Mr. Manager McMAHON. I am looking for light as well as you.

Mr. CARPENTER. Go on.

The WITNESS. I do no not remember any conversation between us.

Q. (By Mr. Manager McMAHON.) What did you say to him when you handed him the money?

A. Nothing.

Q. Did he take the money?

A. Always.

Q. What did he say on taking the money?

A. Nothing that I remember.

Q. I want to know if he made any inquiry of you in regard to the account upon which the money was paid?

A. I do not remember that he ever did.

Q. Did you ever make any explanation to him of the account upon which the money was paid?

A. I do not remember that I ever did.

Q. Did you and he ever have any settlement or comparison of books, or anything of that sort?

A. Never.

Q. You stated that the money was paid, at first $1,500 quarterly?

Mr. CARPENTER. He has not said that money was paid at all.

Mr. Manager McMAHON. He delivered it to Belknap.

Mr. CARPENTER. The manager understands perfectly well the use of words. A payment presupposes an obligation to be satisfied. Sending money to a man does not necessarily imply that there is any indebtedness whatever, and is not a payment.

Mr. Manager McMAHON. I accept the criticism, but it is a nice one—a distinction between the payment of an obligation, and a present.

Mr. CARPENTER. It is a very broad distinction on which human life may depend, and very well worth bearing in mind.

Q. (By Mr. Manager McMAHON.) When you delivered the money to him, as Mr. Carpenter wants it, you stated that you at first delivered him $1,500 quarterly, and after the lapse of one and a half or two years $1,500 semi-annually. State now whether you failed to deliver to him exactly at the time the amount that you were to deliver to him, and if so, why?

A. The first sum sent was not sent——

Mr. CARPENTER. I want to object to that question, Mr. President. It is as disagreeable to me to seem to be captious about objections as it is disagreeable to the Senate to have me captious; but the insidious manner in which the facts of this case are sought to be kept out of view, while some deductions and conclusions are forced in as their substitute, is, although very ingenious and very artful and very gradual, yet perfectly apparent. We ought to have the questions so put to the witness that he will understand and that we shall understand precisely what transaction is being referred to. Now you call his attention to no particular transaction at all; you do not name a place and do not fix a date; you do not determine any particular transaction; and yet you are trying in that way to float him over all of them, when in the only instance in which you put the question direct you did not get what you wanted to get, and I suppose that is the reason why the manager is now seeking to generalize. But it is an improper way, as I believe, to lead this witness. The manager knows perfectly well how to put the proper questions in a direct examination, not fix him between this bowlder and that rock, and lead him from step to step and over gulch and gulf, as he is doing by this method of examination. This is too big a thing to be played on a small, mere game. Let us have it out; let us have the facts.

This is too big a court to be trifled with by that method of examination. Here is a man put on the stand to swear to we all know what. Why do not they let him swear to it? Why do not they put him right straight forward and let us have these facts in their natural order, and not dragged out one after the other in this indirect and, as I think, improper way?

Mr. Manager McMAHON. Mr. President, it is a matter of great deprivation to the House of Representatives, no doubt, that the able gentleman (and I say it in all seriousness and earnestness) does not sit here to conduct the case of the Government for it; but that is one of those accidents which we cannot prevent, for the simple reason that he fails to be a member of the House. The House has selected us to try this case; and while we concede to the gentleman (and we concede it honestly, not in any other except the fairest meaning) great ability in his profession and a full understanding of all the points of law and a full knowledge of all the details of practice and a full aptitude in all the details of *nisi prius* trials, yet we most respectfully submit to the Senate that we, however humble, appear here trying this case on our side; and if the gentleman will but possess his soul in patience for a little while the time will come when he can double this witness up all over four or five times with his unusual skill, and he can bring out all this truth that we are now so insidiously suppressing. He can then make it appear that his client is innocent, and that all this that we are introducing as testimony has nothing whatever to do with this case. A little patience now, a little of that which we have exercised, and the time will come when all these material facts in this case, all this hidden truth can be brought out in the full sunlight that we have had in the last three or four days. Now we propose, and we must be allowed that privilege, to put the questions to the witness. I never knew that right interfered with before.

Mr. CARPENTER. Well, Mr. President, I have had some little experience in the trial of causes at *nisi prius*, as the gentleman says, by which I mean an examination into facts, and I never saw a case tried under those circumstances in which one of two things did not occur: either the lawyer who examined his witness examined him properly, or the other lawyer, if he had any sense, objected to the improper questions put. I do not understand that the House of Representatives comes here with any greater dignity than we do, not a particle. They are prosecutors, he is defendant; and he has as much right here at this tribunal as the whole aggregate House of Representatives. They have no more right to put an improper question than we.

Mr. Manager McMAHON. Understand me; we do not claim the right to put an improper question. We claim the right to conduct the examination properly in the way that we see fit.

Mr. CARPENTER. I will make an explanation to answer that, and say I do not claim to object to a proper question. That leaves us exactly where we started: Is this a proper question or not? That is all I wish to say about it.

Mr. SHERMAN. Let the question be read.

The PRESIDENT *pro tempore*. The question will be read by the reporter.

The question was read from the Official Reporter's short-hand notes, as follows:

Q. When you delivered the money to him you stated that you at first delivered him $1,500 quarterly, and after the lapse of one and a half or two years $1,500 semi-annually. State now whether you failed to deliver to him exactly at the time the amount that you were to deliver to him; and, if so, why?

The PRESIDENT *pro tempore*. Shall this question be put?

The question was decided in the affirmative.

The PRESIDENT *pro tempore*. The objection is overruled, and the question will be answered.

The WITNESS. If I understand the question, I should say that it was my habit to send him money as soon as I heard from him, very soon after it was remitted to me. Is that the answer?

Mr. Manager McMAHON. Yes, sir; but the question goes further than that: Whether you paid him, say within the last year, $1,500 semi-annually at the times that you had been in the habit of sending to him previously?

A. It was my habit to send it to him soon after having received it; but those dates were somewhat irregular.

Q. (By Mr. Manager McMAHON.) In the last year state any irregularity about the dates and what amounts you delivered him in the last year.

A. I think the last money I sent him was about half of $1,500.

Q. About what time of the year did you send that, and what year?

A. I should say it was last November, but I am not positive.

Q. November, 1875?

A. I should say so, but I am not positive.

Q. You had received about $1,500 from the Southwest?

A. Yes, sir.

Q. Of which you sent forward one-half?

A. Yes, sir.

Q. Did you deliver the other half at any subsequent date; and if so, to whom?

A. I delivered it to Mrs. Belknap at the St. James Hotel, New York, I should say shortly before Christmas.

Q. Last Christmas?

A. Yes, sir.

Q. How much did you deliver to her there?

A. I should say it was the half of the remittance that came to me from Mr. Evans, probably from $700 to $750.

Q. When you delivered this money to Mrs. Belknap, state whether you had had any previous communication with the Secretary of War concerning it?

A. I think I wrote him, as was my custom, that I had a remittance, and I think his reply was to call and see his wife, that she would be at the St. James Hotel at such a date. That is my recollection; I am not absolute about it. I think that is the fact.

Q. Give us the substance of the letter you received from General Belknap again, as near as you can, the exact language, when you wrote to him last December that you had a remittance for him. Give us now the substance of his reply, or as near as you can the words of his reply.

Mr. CARPENTER. May I be allowed to ask one question right there?

Mr. Manager McMAHON. Yes.

Q. (By Mr. CARPENTER.) Have you any distinct recollection that you received any such letter?

A. No, sir.

Q. Then would it not be pretty difficult to give the contents of it? Do you now distinctly remember the circumstance that you did receive such a letter from Belknap telling you to go and see his wife?

A. I do not know that I did—not positively.

Mr. CARPENTER. Then it would be pretty difficult to give the contents of it.

Q. (By Mr. Manager McMAHON.) What is your best recollection as to whether you received a letter from him or not before you paid the money to his wife?

Mr. CARPENTER. He says he has no distinct recollection.

Mr. Manager McMAHON. No, I beg your pardon. I ask what is his best recollection about it.

Mr. BLAIR. We submit, Mr. President, that when the witness says that he does not recollect receiving any such letter at all it is objectionable to ask the witness what his best recollection is of the contents of the letter which he says positively that he does not recollect having received.

Mr. Manager McMAHON. Before the gentleman sits down a question may narrow this controversy. He has already testified——

Mr. LOGAN. Ask him the question again, and let us know just what he does say.

The following question was read by the Official Reporter from his short-hand notes:

Q. Give us the substance of the letter you received from General Belknap again, as near as you can, the exact language, when you wrote to him last December that you had a remittance for him. Give us now the substance of his reply, or, as near as you can, the words of his reply.

Mr. CARPENTER. Having asked this witness if he distinctly recollects receiving such a letter, and he having said he does not, the question in substance now is, what would have been the contents of it if he had received it?

Mr. Manager McMAHON. I beg your pardon. I ask him now, what is his best recollection as to having received such a letter?

Mr. CONKLING. Let him answer that.

The PRESIDENT *pro tempore*. The witness will answer that question.

Mr. Manager McMAHON. Of course prior to paying the money to Mrs. Belknap.

The WITNESS. I shall have to make something of an explanation.

Mr. Manager McMAHON. Go ahead.

The WITNESS. When the remittance came from Mr. Evans—the last half—I wrote General Belknap and he wrote me back to send the money to his wife, No. 2222 G street, but that letter miscarried. I did not hear from him for I guess two weeks, perhaps three, I do not remember exactly, and I wrote him again; and it was then, I think, that he told me to go and see his wife at the Saint James Hotel. I think he wrote me that; and while she was in New York the missent letter turned up, which had the direction in it that I have stated, to send this money to No. 2222 G street.

Q. (By Mr. Manager McMAHON.) Are these letters now in existence or have they been destroyed?

A. That letter I gave to Mrs. Belknap.

Q. Which one do you refer to now?

A. The delayed letter.

Q. What became of the other which came to you, the last one?

A. That I destroyed, no doubt. I do not remember positively about it; but it was my habit to do so. That is all I remember.

Q. About what time of the year 1870 did you first become acquainted with John S. Evans?

A. It must have been very early in October.

Q. Have you any points or memoranda by which you can fix the exact time?

A. Nothing nearer than the date of the contract.

Q. About how long before you entered into the contract with him that you refer to was it that you met him? How many days before?

A. I cannot say positively—four, five, six, or seven days probably.

Q. What business was Mr. Evans pursuing in the city of Washington when you first met him?

A. He told me he was there seeking——

Mr. CARPENTER. That will not do.

Q. (By Mr. Manager McMAHON.) Where did Mr. Evans reside in Washington City at that time?

A. I think he told me he resided——

Mr. CARPENTER. No matter what he told you. We object to any such conversation.

Q. (By Mr. Manager McMAHON.) How many interviews did you have with him before you made the contract referred to?

A. I cannot tell you positively; one or two, possibly three.

Q. Did you go to see him first, or did he go to see you?

A. I went to see him, I think.

Q. How came you to go to see him—by whose direction?

A. I think General Belknap's or his wife's, and I think it was the General himself who told me he was in the city.

Q. What else did the General say?

A. This refers to my appointment as post-trader?

Q. Yes, sir.

A. My reply would not include the first conversation.

Q. I am speaking now of what General Belknap said to you that led you to go and see Evans.

A. He said he would appoint me to this place, post-trader at Fort Sill, I think, and he then told me that I had better go and see Mr. Evans; that he was in the city and an applicant for re-appointment; and that if I was to run the post myself I think he said I ought to make an arrangement with him to buy out his stock of goods and his buildings, because it would not be fair to turn him out of his position without buying out his stock and buildings; it would ruin him, or something of that kind, and he would not consent to it.

Q. You went to see Mr. Evans upon that?

A. I did.

Q. Did you see Mr. Evans and make an arrangement with him?

A. I did.

Q. Who gave you the information as to where he could be found?

A. I think General Belknap himself. He might have told me the hotel or he might simply have said he was in the city and I searched for him; I do not remember, it is so long ago.

Q. [Handing to the witness the agreement of October 8, 1870, between himself and J. S. Evans, heretofore offered in evidence.] Look at this before I ask any more questions and see if this is the agreement you subsequently entered into with Mr. Evans. Do you recognize your signature?

A. Yes, sir; I do.

Q. Did Mr. Evans sign that paper with you?

A. He did.

Q. This agreement was reduced to writing in New York City. State whether it was agreed to before it was reduced to writing, and, if so, where. In other words, whether you came to any understanding in Washington before you went to New York City?

A. We came to an understanding as to the amount he was willing to pay, if I would allow him to hold the post and continue the business at Fort Sill.

Q. In that connection, without further questions, give us all that passed between you and Mr. Evans prior to the execution of this contract.

Mr. CARPENTER. That we object to, Mr. President.

Mr. Manager McMAHON. We have no objection to the submission of the question to the Senate if there is no argument to be made.

The PRESIDENT *pro tempore*. The Chair will submit the question to the Senate.

Mr. CARPENTER. The Senate, of course, will observe that this calls for a conversation between the witness and a third person, not in our presence, with no pretense that we know anything about it.

The PRESIDENT *pro tempore*. The question is on the admission of the interrogatory.

The question was decided in the negative.

The PRESIDENT *pro tempore*. The objection is sustained.

Q. (By Mr. Manager McMAHON.) You went to New York City and entered into this agreement?

A. Yes, sir.

Q. State whether after you came to an understanding with Mr. Evans in Washington City you went to see the Secretary of War before you went to New York City?

A. I think I did.

Q. What passed between you and him at that time? What did you say to the Secretary of War and what did he say to you?

A. I think I asked him if he would appoint Mr. Evans in my place if I would withdraw in his favor.

Q. What did he say?

A. I think he assented.

Q. Did you then go to New York?

A. Yes, sir.

Q. Did you, after this agreement was executed, send any word to the Secretary of War?

A. There seems to have been a letter read here, but I had forgotten all about it.

Q. To whom was Mr. Evans's commission as post-trader sent first by the Secretary of War, or Adjutant-General, or wherever it came from?

A. Well, sir, from something that I have heard here I should have been led to suppose it was sent to me.

Mr. CARPENTER. If you do not know, say so.

The WITNESS. I had forgotten.

Q. (By Mr. Manager McMAHON.) After this agreement was executed between you and Mr. Evans, state how soon you received any money under it?

A. I think in the following month.

Q. Where did you deposit the moneys that you received from Evans; in what bank?

A. In the National Bank of Commerce, I think.

Q. Have you the bank-book or anything to show the date at which you received the first $3,000 from Evans?

A. I have not.

Q. About how long did Evans continue to pay you $12,000 a year or $3,000 a quarter?

Mr. CARPENTER. He has not stated that he ever paid it.

Mr. Manager McMAHON. The agreement shows it.

Mr. CARPENTER. You have not offered the agreement in evidence.

Mr. Manager McMAHON. O, yes; it has been offered in evidence and read on a previous day. (To the witness.) How long was it that you received quarterly from Evans $3,000 under this agreement?

A. I should say perhaps eighteen months, more or less; I am not certain about the time.

Q. What led to the reduction from $12,000 a year to $6,000 a year?

A. It was mainly the complaints of Evans and his partner, Mr. Fisher; and the publication of the Tribune article may have had something to do with it.

Q. Do you refer now to the article that was read here in evidence the other day as from the New York Tribune?

A. Yes, sir.

Q. After that article appeared in the New York Tribune, what conversation passed between you and General Belknap in regard to it?

Mr. CARPENTER. Would it not be better and more in form to ask him if there ever was any conversation, and then to ask what it was?

Mr. Manager McMAHON. It seems to me it amounts to the same thing.

Mr. CARPENTER. It seems to me it does not. You want to call the witness's attention to the fact that there was one, you remind him of that, and then you put your other questions. I would rather it should come in the other order.

Mr. Manager McMAHON. I do not think I can accommodate the counsel in so small a matter as that.

Mr. CARPENTER. Go ahead then.

Q. (By Mr. Manager McMAHON.) What conversation, if any—I will put that in—passed between you and the Secretary of War in regard to that New York Tribune article?

A. I think the next time I saw him—but how soon after it was I cannot say, I think it might have been one month, or it might have been four—he asked me if I had a contract with Evans, and I think I asked him who he thought was the cause of the articles appearing in the Tribune, who was the instigator. At all events I think he told me who he thought was; whether in reply to a question of mine or not, I am not certain.

Q. What name did he give?

A. I think he gave the name of General Hazen, that he thought he was.

Q. Where did this conversation occur?

A. My impression is that it was in New York.

Q. Do you remember the business that brought him over there at that time?

A. I do not at all.

Q. When he asked you whether you had a contract, what reply, if any, did you make?

A. I said I had.

Q. Did he make any inquiry as to the terms of that contract?

A. Not that I remember. I think not.

Q. What further conversation passed between you and him in regard to that contract?

A. None that I remember.

Q. Who made the first reference to the New York Tribune article?

A. I cannot tell you positively.

Q. What conversation, if any, passed between you in regard to the continuance of this contract between you and Evans?

A. Not any that I remember.

Q. Have you stated all now that occurred between you and General Belknap upon that occasion when you state that he asked you if you had a contract and you told him you had?

A. It was this conversation about who was the author of the article in the New York Tribune?

Q. Yes, sir.

A. It seems to me that I said something to him that I had reduced the bonus at the fort from $12,000 to $6,000. It seems to me I said something of that kind.

Q. What did he say in answer to that?

A. I do not remember that he said anything. I would not swear to that as very positive recollection, but it is the best I have.

Q. Why did you communicate that fact to him that you had reduced it to $6,000?

Mr. CARPENTER. He is not positive that he did.

Mr. Manager McMAHON. But he says that he thinks he did. (To the witness.) Why did you communicate that fact to him?

A. It seemed to be a natural one to communicate.

Q. (By Mr. Manager McMAHON.) Why?

Mr. CARPENTER. I object to that. What seemed to the witness to be natural to do, and why it seemed to be natural, cannot be proper testimony.

Q. (By Mr. Manager McMAHON.) Why did you communicate to him the fact that you had reduced the bonus at the fort from $12,000 to $6,000?

A. Because I had been sending him this amount of money.

Q. Did General Belknap know where these moneys came from that you were sending to him?

Mr. CARPENTER. I object to that question. That calls for a conclusion, not for a fact.

Mr. Manager McMAHON. It is a square fact, I think.

Mr. CARPENTER. I do not think it is. A conclusion may be drawn from a correspondence running through years, and a dozen conversations; but it is a conclusion always. If you ask him what he told General Belknap, or what Belknap ever said to him, that calls for a fact; but to ask him whether he must have known such a thing calls for conclusion.

Mr. Manager McMAHON. I do not ask whether he must have known.

Mr. CARPENTER. You may ask whether he knew it.

Mr. Manager McMAHON. I insist on the question. Did General Belknap at this time know where this money was coming from that was being paid to him?

The PRESIDENT *pro tempore*. The Chair will submit the question to the Senate, shall this interrogatory be admitted?

The question was decided in the affirmative.

Mr. Manager McMAHON. Answer the question, Mr. Marsh.

The question was read by the Official Reporter from his short-hand notes, as follows:

Q. Did General Belknap at this time know where the money was coming from that was being paid to him?

A. I should say that I presume he did.

Q. (By Mr. Manager McMAHON.) Had you had at that time any business transactions with him whatever, except the Fort Sill matter?

A. No, sir.

Mr. CARPENTER. You have not shown any transaction between him and General Belknap.

Mr. Manager McMAHON. We have shown that this witness sent one-half the Fort Sill money to General Belknap. That is a transaction.

Mr. CARPENTER. Go ahead.

Q. (By Mr. Manager McMAHON.) What is your answer to the question, whether you ever had any other business transactions or money transactions with General Belknap, except this Fort Sill or Southwest matter?

A. I never had, to my recollection.

Q. Where did all the money come from that you sent by express or certificate or that you delivered to General Belknap? From what source did it come?

A. It came from John S. Evans & Co.

Q. What connection had it with this contract which we have offered in evidence?

A. It was in fulfillment of the terms of the contract.

Q. State now whether, up to the 1st of March, 1876, you had delivered to Mr. Belknap, or sent to him, the half of all the money that you received from John S. Evans on account of this Fort Sill transaction.

A. I had, either to him or one or both of his wives.

Q. Upon how many occasions did you deliver money to his wife or wives?

A. I sent the first money that came to me from the fort, the half of it, to his first wife, now deceased.

Q. When was the second time?

A. That was in December, 1875, about Christmas.

Q. Then they were the first and last payments?

A. Yes, sir.

Q. Did you make any other payment, or deliveries, or shipments except the first and last to his wives?

A. Not that I remember.

Q. How did you send the first shipment, and about what time, to the second Mrs. Belknap, now dead?

A. It was in November, 1870. I sent it to her by express.

Q. You have stated that you never sent money by express except upon order. Who directed you to send that money by express to Mrs. Belknap?

A. I do not think any one did.

Q. How soon did you send it after you received it?

A. I should say very soon; but I do not remember positively.

Q. Did you send it by the same express company that you have spoken about, Adams Express?

A. I am not positive, it is so long ago. May I be allowed to explain?

Mr. Manager McMAHON. Yes, sir.

A. According to the express company's books——

Mr. CARPENTER. Never mind that.

Mr. Manager McMAHON. The witness has a right to make the explanation.

A. According to the express company's books as produced here, the first remittance was sent to General Belknap. I have a very clear recollection that I sent the money to her.

Mr. CARPENTER. Probably it is a mistake in the entry in the book.

A. I do not know that it was. If I was called upon to explain it, I should say that inside of the package addressed to him was another sealed package addressed to her with the money in it. I am sure I sent the money to her.

Q. (By Mr. Manager McMAHON.) Do you remember the day that the second Mrs. Belknap died?

A. It was very late in December, 1870.

Q. The 30th or 31st of December, was it not?

A. About that date.

Q. Do you not remember that on New Year's Day there was no observance of the day here on account of her death? I refer to that to fix the time.

A. I do not remember that fact.

Q. It was about the last day of December, 1870?

A. Yes, sir.

Q. How many children had General Belknap?

A. By this wife one.

Mr. BLACK. Do you want to know about the rest?

Mr. Manager McMAHON. No, that is all I want. (To the witness.) He had one child. How old was it at the time its mother died?

A. I cannot tell you. It was very young.

Q. (By Mr. Manager McMAHON.) How soon after the death of the mother did the child die?

A. I should say the following summer.

Q. That would be in 1871?

A. Yes, sir. I am not positive about that date.

Q. Have you any recollection about the time that General Belknap married his present wife?

A. No, sir; not positively.

Q. In making your application for appointment as post-trader you filed a recommendation——

Mr. CARPENTER. Will not the manager ask him whether he ever did make an application and how he did make it?

Mr. Manager McMAHON. That has been proved already.

Mr. CARPENTER. Then do not state it again.

Mr. Manager McMAHON. I am simply coming to the question. (To the witness.) You filed a recommendation. State whether you made any application to Senator SHERMAN for a recommendation?

A. I did not personally.

Q. Did you ever file any recommendation from Senator SHERMAN?

A. I do not remember.

Q. You filed one, I believe the record shows, from Job Stevenson?

A. Yes, sir; but I had forgotten it.

Mr. CARPENTER, (to Mr. Manager McMAHON.) Will you ask the witness who this Job Stevenson is?

Q. (By Mr. Manager McMAHON.) Who was Hon. Job E. Stevenson?

A. A member of Congress. A member of the House from Cincinnati. I do not know whether he was in the House at that time.

Q. He had been a member?

A. He had been a member; whether he was at that time or not, I am not certain.

Mr. Manager McMAHON. That is all for the present, I believe. We are through with the direct examination.

Mr. CARPENTER. If the court please, with the permission of the managers, at this point I will ask the court for an attachment against Mr. Evans. He has been subpœnaed, as the record shows, and I believe has not answered to his name at all. He is an important witness for this defense, and we ask that an attachment may issue now and be put in the hands of the Sergeant-at-Arms before the next train leaves for New York.

Mr. Manager McMAHON. I simply desire to state in that connection that Mr. Evans is an important witness for the prosecution, and has been subpœnaed and ordered here by telegraph on several occasions, and that an attachment would have been issued by the Government for him if we had not the information that he had started on the 4th of July to be here.

Mr. BLACK. Where from?

Mr. Manager McMAHON. From Fort Sill, our dispatch says.

The PRESIDENT *pro tempore*. Is there objection to issuing the attachment?

Mr. Manager JENKS. None. We want it.

Mr. Manager McMAHON. We make no objection to the issuing of the attachment, provided the proper foundation is laid. We do not wish to be held responsible for it.

Mr. CARPENTER. The return of the Segeant-at-Arms shows that he was subpœnaed.

Mr. Manager McMAHON. By telegraph. I do not know whether that would be held sufficient.

Mr. CARPENTER. He is on the list of witnesses which Mr. Belknap asked to have subpœnaed.

Mr. SHERMAN. I ask for the reading of the return of the officer who made the service.

Mr. CARPENTER. The subpœna was denied to Mr. Belknap on the ground that Evans had already been subpœnaed by the Government.

Mr. Manager McMAHON. And the Government in good faith has subpœnaed him and desires his attendance.

The PRESIDENT *pro tempore*. The Secretary will report the return.

The CHIEF CLERK. The return to the subpœna to John S. Evans, made by the Sergeant-at-Arms, is in the following words:

WASHINGTON, D. C., *July* 1, 1876.

I made service of the within subpœna, telegraphing the same to the within-named John S. Evans, at Fort Sill, Indian Territory, on the evening of the 22d day of June, 1876.

JOHN R. FRENCH,
Sergeant-at-Arms United States Senate.

Mr. Manager McMAHON. I will state in addition that I have seen a dispatch in the Sergeant-at-Arms' room from John S. Evans acknowledging the receipt of this subpœna.

Mr. CARPENTER. On that we ask for an attachment.

The PRESIDENT *pro tempore*. The counsel asks for an attachment. Shall it be granted? The Chair hears no objection. It is so ordered.

Mr. CARPENTER. We want it placed in the hands of the Sergeant-at-Arms at once.

The PRESIDENT *pro tempore*. It will be.

Mr. EDMUNDS. May I inquire of the Chair whether there was proof that Evans had been served?

The PRESIDENT *pro tempore*. It was stated that there was an acknowledgment of his service by telegraph.

Mr. EDMUNDS. I move to reconsider that order.

The PRESIDENT *pro tempore*. The question is on the motion to reconsider.

The motion to reconsider was agreed to.

The PRESIDENT *pro tempore*. The question now is on ordering the attachment.

Mr. EDMUNDS. I should like to have the proof of service read.

The PRESIDENT *pro tempore*. It has been read. The Secretary will read it again.

Mr. MERRIMON. I ask counsel to state the ground on which they base their motion for this attachment.

Mr. CARPENTER. Mr. President, I will state the facts of the case as I understand them. Mr. Evans is regarded by us as one of the most material witnesses for the defense. He was on the original list furnished by us to the Secretary upon which subpœnas were ordered by this court to issue. The proper authorities—I do not remember whether the Secretary or the Sergeant-at-Arms—declined to summon him for us; at all events the witnesses who had been subpœnaed by the Government were not subpœnaed as for the defendant, of course to save the expense of a double subpœna, which was unnecessary; but our request was for a subpœna for him to bring him here on the 6th of July. The subpœna that was issued was a telegraphic subpœna or a subpœna telegraphed over the wires to him which he acknowledges the receipt and service of by telegraph. I understand that that is the way in which all the witnesses at this trial have been subpœnaed. I want to state in that connection that unless Mr. Evans is here when the case closes on the part of the prosecution we shall be driven to appeal to the court to delay the trial till he can be here. For the purpose of avoiding that motion, which we shall be compelled to make, I interrupted the managers, with their consent, as soon as I learned the fact that he was not here, to make this motion, so that no time may be lost by our neglect. We understand that he is to-day at Fort Sill.

Mr. EDMUNDS. I ask that the return of the Sergeant-at-Arms on the subpœna that contains the name of Evans be read, that we may see what is the official proof.

The PRESIDENT *pro tempore*. The Chair so understood, and it has been sent for.

Meantime may I inquire whether the counsel is right in saying that the service of all subpœnas for this trial on witnesses at a distance has been made by telegraph?

Mr. CARPENTER. I understand so.

The PRESIDENT *pro tempore*. Not all, the Chair is informed by the Sergeant-at-Arms.

Mr. Manager LAPHAM. In no case, as I understand, except by a previous arrangement with the witnesses who have been here before one of the committees.

Mr. CONKLING. Had this man been here?

Mr. Manager LAPHAM. Yes, sir.

Mr. CONKLING. So that you had his consent?

Mr. Manager LAPHAM. I am not certain as to that.

Mr. STEVENSON. Mr. President, what has become of the subpœna?

The PRESIDENT *pro tempore*. It is in the hands of one of the clerks, and has been sent for. It was sent out to have the attachment made out. It will be here as soon as he can be reached.

Mr. STEVENSON. I should like to inquire of the managers or counsel for the defense if there is any law to summon a witness by telegraph. I am not aware of any.

Mr. Manager McMAHON. Mr. President, did I understand the Senator as making the inquiry of me or of the counsel?

Mr. STEVENSON. I ask the question of either side. I understood the witnesses to have been summoned by telegraph. I want to know whether that was a legal summons or not.

Mr. Manager McMAHON. I would state to the honorable Senator that the Government stands in a different position probably in this case from the defendant.

Mr. STEVENSON. I was only speaking as to this gentleman?

Mr. Manager McMAHON. This gentleman is in the category of all the other of the Government witnesses, except some few about the city. They had all been regularly subpœnaed before House committees and had testified before House committees and were not finally discharged by the House committees, but ordered to go until further notified by telegraph; but of course that confers no power upon the Senate other than it may have——

Mr. CONKLING. And this is one of those witnesses?

Mr. Manager McMAHON. Yes, sir.

The PRESIDENT *pro tempore*. The Chair is informed and will state that in all cases where telegraphic service occurred the parties responded to the service by dispatch.

Mr. EDMUNDS. We want to see the papers. We want the return of the Sergeant-at-Arms.

The PRESIDENT *pro tempore*. A messenger has been dispatched for the paper.

Mr. EDMUNDS. Cannot the trial go on in the mean time?

The PRESIDENT *pro tempore*. That is left to the parties.

Mr. SHERMAN. The reporter can read the return.

Mr. CARPENTER. The reporter has the return in his minutes.

Mr. STEVENSON. I do not know that a service by dispatch would authorize an attachment.

Mr. LOGAN. I wish to make an inquiry. A few days ago a request was made for an attachment to issue against certain witnesses. I should like to know if that attachment was issued.

The PRESIDENT *pro tempore* The application was withdrawn. No such order was made.

Mr. Manager JENKS. I ask unanimous consent to make a request that the attachment shall be issued, and then when the witness comes in if he were not regularly served it can be found out by inquiring of him upon oath, and of course there would be no penalty, in pursuance of that attachment, inflicted. The process of attachment is only a means of bringing him in, and it would only amount in substance to a subpœna to appear forthwith, as in many cases we do have subpœnas issued to appear forthwith and bring in the witness then and there. Now in lieu of that, as he has been served by subpœna over the wires and as he has acknowledged that fact, if he be brought here upon an attachment and it does not appear that he has been subpœnaed and had full notice, let it have the effect only of a subpœna to appear forthwith; and in the event of his saying that he had notice and opportunity to appear and disregarded it, then he ought to be punished.

Mr. CONKLING. The question I suggest is one of power. Have we power to attach a witness who has not been subpœnaed legally? By "legally" I mean as the law says he shall be.

Mr. Manager JENKS. I should say you have not power to attach in the sense of punishment; but you have power to bring in; and the question as to whether that power has been rightly exercised may be determined by proof afterward. Then you can prove that you have issued your process and that you had power to issue it.

Mr. EDMUNDS. Have we the power to deprive witness of his liberty all the way from Fort Sill here if he has not committed any offense?

Mr. Manager JENKS. It would only have the effect of a subpœna that he appear forthwith in that event. It is purely discretionary to punish or not punish.

Mr. BLACK. The attachment is an order to arrest him, is it not, Mr. JENKS, and bring him here?

Mr. Manager JENKS. That was the ordinary process to bring in a suitor at the common law; but there was no special harm done; it was merely to bring him into court. This is only as a matter of defense; the application comes from your own side.

Mr. BLACK. From our side?

Mr. Manager JENKS. From you.

Mr. EDMUNDS. I move that this subject be laid on the table for the time being.

The PRESIDENT *pro tempore*. The return has been read by the Secretary; and the reporter can read it from his notes of what the Secretary read.

Mr. EDMUNDS. We shall get it presently. I move to lay the subject on the table.

The motion was agreed to.

Mr. CARPENTER. Mr. President, I do not know, after the thing is laid on the table, whether we shall have any rights over it again or not. We desire to state that if Mr. Evans is not here when the prosecution close their case, we shall be compelled to move for an adjournment until such time as he can be produced.

The PRESIDENT *pro tempore*. The service is here now.

Mr. CONKLING. Let us hear it read.

The PRESIDENT *pro tempore*. Is there objection to having the return read? The Chair hears none, and it will be read.

The Chief Clerk read as follows:

WASHINGTON, *July* 1, 1876.

I made service of the within subpœna, telegraphing the same to the within-named John S. Evans at Fort Sill, Indian Territory, on the evening of the 22d day of June, 1876.

JOHN R. FRENCH,
Sergeant-at-Arms, United States Senate.

Mr. EDMUNDS. That is no service in point of law.

Mr. CARPENTER. We have done everything in our power about that man. We have furnished his name as a witness, and the court has ordered him to be subpœnaed.

Mr. EDMUNDS. It is not your fault.

Mr. CONKLING. I do not see that the counsel could do anything more.

Mr. Manager HOAR. I suppose he will be here; but I do not think it unreasonable to require the counsel to reduce to writing what they propose to prove by him.

Mr. EDMUNDS. I ask unanimous consent to move that a subpœna issue for John S. Evans, commanding him to appear forthwith.

The PRESIDENT *pro tempore*. The Senator from Vermont moves that a subpœna be issued commanding Mr. Evans to appear here forthwith.

The motion was agreed to.

The PRESIDENT *pro tempore*. The order will be executed.

Mr. EDMUNDS. Now let us see if we cannot get that process served according to law.

Mr. Manager McMAHON. I would prefer that the subpœna issue upon behalf of the defendant, because I wish any application for continuance to be based upon their own ground, not upon ours.

Mr. EDMUNDS. We are executing our own order.

The PRESIDENT *pro tempore*. The direct examination of the witness Marsh has been concluded. The counsel will proceed with the cross-examination.

Mr. CARPENTER. Mr. President, the examination of this witness has been rather peculiar. He has been escorted around the case two or three times. He has at times been brought very near the border of it; but whether he has passed over the limit into anything that is material and whether he has testified to anything that we need controvert in many particulars must depend upon a most critical examination of the precise words which the manager and the witness, who have understood each other so well, have employed. I therefore ask (and the court will see that it is not at all for delay, but only for the purpose of having an opportunity to examine his testimony in print to-morrow) that we may be permitted to waive this afternoon the cross-examination of this witness and take it up to-morrow or at some subsequent stage of the trial.

The PRESIDENT *pro tempore*. Is there objection to this course being pursued? The Chair hears none.

Mr. Manager McMAHON. Mr. Marsh, before you leave the stand I want to ask one question which I had really forgotten. (To Mr. Carpenter.) You have no objection to making the case complete for you, of course?

Mr. CARPENTER. Certainly not.

CALEB P. MARSH'S examination continued.

By Mr. Manager McMAHON:

Q. When Mr. Evans wanted any favors or applications made to the War Department, state, if you have any knowledge, whether he made application to you or directly to the Secretary of War.

Mr. CARPENTER. When he made application? There is no proof he ever did make application.

The WITNESS. He has made application to me.

Q. (By Mr. Manager McMAHON.) What did you do with those applications?

A. It was my habit to forward them to the Secretary of War.

Q. What would the Secretary of War do with his answer to the requests or applications?

A. I do not know, I am sure. Repeat the question, please.

Q. After you had forwarded these applications or requests of Mr. Evans to the Secretary of War, what notice, and how, would be taken of them by the Secretary of War?

A. That was usually the last I would hear of them.

Q. State whether upon any occasion the request was transmitted back through you?

A. I do not remember any.

Q. Do you remember anything about any complaints being made at any time about the selling of spirituous liquors by Evans or the introduction of them into the Indian Territory?

A. I do not now remember.

Q. Have you any recollection of being consulted by the Secretary of War upon that question at any time?

A. I do not remember.

WILLIAM B. HAZEN sworn and examined.

By Mr. Manager McMAHON:

Question. General, you are in the Army?

Answer. I am.

Q. In what position?

A. I am a colonel of the Sixth Infantry and brevet major-general.

Q. How long have you been colonel of that regiment?

A. Since 1868.

Q. In 1870 where was it stationed?

A. In 1870 my regiment was stationed in the Indian Territory.

Q. Was Fort Sill within your lines?

A. It was in my command but a small portion of the time; but four companies of my regiment were stationed there.

Q. How long were four companies of your command stationed there and during what period of time?

A. They went there in the spring of 1868, and I think they remained there for two or three years; I do not remember precisely.

Q. Where were you stationed in, say, February, 1872?

A. I was stationed at Fort Hays, Kansas.

Q. Were any of your troops at that time at Fort Sill?

A. I think they were. They were or had just been removed from there.

Q. Have you been personally to Fort Sill?

A. I have been.

Q. Have you ever seen the contract between John S. Evans and Marsh?

A. I never have.

Q. Were you at Fort Sill at any time between, say, July 1, 1870, and February 17, 1872?

A. No.

Q. Was Fort Sill under your command, do you say?

A. Fort Sill was under my command for a very short time in 1869 or 1870; perhaps it was in 1870.

Q. What time of 1870?

A. It was the latter part of 1870, and probably the first part of 1871.

Q. Was your attention called at any time to the post-tradership at Fort Sill?.

A. It was.

Q. By whom?

A. By a great many officers of my own regiment and of the Tenth Cavalry, but particularly by Lieutenant Pratt of the Tenth Cavalry; and also I would say by Mr. Fisher, one of the members of the firm of Evans & Fisher.

Q. Was your attention called to it officially as an officer of the Army?

A. As an officer of the Army.

Q. Did you communicate these facts directly or indirectly to the Military Committee of the House?

A. I did.

Mr. CARPENTER. One moment. We object to that. We understand that the method of communication in the Army is not through Congress.

Mr. Manager McMAHON. We shall find out about that.

Mr. CARPENTER. We object to this question.

The PRESIDENT *pro tempore*. Do the managers insist upon it?

Mr. Manager McMAHON. I will withdraw it for the present.

The PRESIDENT *pro tempore*. The question is withdrawn.

Q. (By Mr. Manager McMAHON.) Did you come on to Washington City in February, 1872?

A. I did.

Q. State, if you know, who furnished the information upon which the New York Tribune article was published.

Mr. CARPENTER. That we object to. What can be the object of that testimony?

Mr Manager McMAHON. Of course the gentleman has a right to require me to state the object, and I will state it. From our own stand-point, assuming the testimony which we have already given to be correct, which we have a right to do, we have heretofore proven that the article in the New York Tribune was brought to the knowledge of General Belknap. We have to-day proven that General Belknap had ascertained that the authority for those charges was General Hazen, who had Fort Sill within his lines and who had troops stationed there. We have had from another source that General Belknap was exceedingly indignant because these facts had been reported either to the Military Committee or to the newspapers. [Mr. Carpenter shook his head.] I beg your pardon, gentlemen. Shaking of the head will not wipe out the record. The record shows that General Belknap was very indignant because General Hazen had represented the facts to the Military Committee instead of representing the facts to him.

Mr. CARPENTER. That is right, but that is not the way you stated it before.

Mr. Manager McMAHON. That is my statement, that he was indignant because General Hazen had represented it to a committee instead of to him. Now this is the inference we want to draw from it: There is no libel in the New York Tribune article upon Secretary Belknap; on the contrary, if you will read that article you will find that it expresely excludes the Secretary from participation in this matter, and says that he knows nothing about it. It is no libel upon him in a newspaper, which is a subject upon which my friend is so sensitive, and upon which the counsel made the point, and very properly, that a man should not every time run and see the author of a newspaper article; but here are charges put in this article, coming from an officer whose name is not given, but then at the bottom of it is stated that these charges are made on the authority of a high officer under the Government in the Army. Here is the Secretary of War not charged, not implicated, no libel put upon his character, no stain upon him, but a grievance, a monstrous grievance is called to his attention, one that demanded the immediate arm of the Government to remedy if it were true. While I submit to the decision that was made a while ago in regard to the testimony of Mr. Whitelaw Reid, and did not propose to argue it at that time, I say that it is the very highest kind of testimony upon a question like this, that when these

charges are made in a public newspaper, not against this gentleman who is upon trial, but against certain other individuals, and public attention is called to them, an extract from a letter quoted with quotation marks to indicate that it is an extract from an officer at that point, and then that is fathered by a leading officer in the Army—I say we have a right to show, as we propose now to show, that instead of hunting up whether these things are true or not, instead of endeavoring as an officer of the Army to correct these evils, he cloaks them, does not inquire even when he knows the officer who is the authority for this statement, or the officer commanding this particular post. He shuts his eye to the transaction and goes nowhere for information. He goes neither to Mr. Smalley, who wrote the article, nor to Mr. Reid, who published it, nor to General Hazen, who was the authority for it; and, as we shall show hereafter, he neither goes to Evans nor to Caleb P. Marsh to learn anything about it.

Are there no inferences to be drawn from these facts? Is it not the best kind of testimony when we have got the peculiar case that we have here? Then what are your relations, Mr. Secretary, or what were your relations to this man? Was Mr. Marsh privately milking him and dividing with you and you knew it? The inference is almost irresistible that he was aware of all these facts. He knew that General Hazen was the man who was responsible for this statement, and yet he neither corrects the abuses nor calls upon General Hazen in any shape or form; but gentlemen on the other side seem to feel, and they hide themselves under that, that they are indignant. He becomes very indignant because instead of the matter being represented to him, the Secretary of War, it was represented to a Military Committee. The fact of the matter was known when it was represented to the Military Committee and represented through the public press and represented to the Secretary of War; yet that sore, that disgraceful corruption, that cancer upon the body-politic was never probed into, never cut out, until finally it grew so rotten that it fell to pieces of its own accord.

Mr. EDMUNDS. I should like to ask the managers a question, if I may do so. How can it make any difference if as is shown the respondent believed that General Hazen was the author of this article, or the informer, whether that belief was well-founded or ill-founded on the theory that you have presented?

Mr. Manager McMAHON. I make no point as to its being well or ill founded. I simply ask the witness whether after it was published—and that is my whole point; if it is not good the question falls—and he was aware that General Hazen did inspire this article and was the authority for it, he made no inquiry from him as to whether it was true and upon what authority he based his statement.

Mr. EDMUNDS. My inquiry is this, Mr. President, if I may have unanimous consent to make it: It has been stated in the evidence that General Belknap believed that General Hazen was the originator or author of these charges. The point of the managers is that his taking no action to correct it, if he did take none, is a circumstance to be considered. If General Belknap did believe this to be true, how is it of any consequence for us to inquire whether General Hazen was in fact or not the author or as to the inference produced on the mind of the respondent?

Mr. Manager McMAHON. If the Senator will permit me to answer his question, if the Secretary of War did not believe what to be true?

Mr. EDMUNDS. That Hazen was the author or orignator of the article.

Mr. Manager McMAHON. I think we do not still understand each other, because my point is that if, as has been testified, the Secretary of War believed General Hazen to be the author of the article, it was his duty, having a responsible name for it, to make inquiry of General Hazen. We have proposed to show that he made no inquiry of anybody else; that he did not make it of General Grierson, who was in command; that he did not make it of this man or that man who was authorized; and we want to close up the entire gap to show that he made inquiry of no person.

Mr. BLACK. He did make inquiry of General Grierson.

Mr. Manager McMAHON. I beg your pardon; he did not ask in his letter to Mr. Grierson whether Evans was paying $12,000 to Marsh. He asked pretty much everything else that could be asked except that.

Mr. STEVENSON. May I ask the gentleman what the precise question is?

Mr Manager McMAHON. We have had so much argument that perhaps I have forgotten the exact question; but this is the point: I desire to ask the witness whether after this article was published General Belknap made any official or personal inquiry of him in regard to the truth of the statements contained in it.

Mr. Manager LAPHAM. The question objected to is whether General Hazen furnished the information.

Mr. Manager McMAHON. I see the question that was put. It is possibly unimportant, and in that view I will vary the question and we can consider the argument as made on the next question.

Mr. CARPENTER. That is, on your side?

Mr. Manager McMAHON. Yes, sir.

Mr. CARPENTER. We have not made any argument.

Q. (By Mr. Manager McMAHON.) After the publication of the article in the New York Tribune, state whether the Secretary of War officially or otherwise made any inquiry of you in regard to the truth of the statements contained in the article.

Mr. CARPENTER. That question we object to.

Mr. Manager McMAHON. I ask the court to consider my argument as made on this question.

Mr. CARPENTER. There is a little incident always running through this case. We cannot argue the question of admissibility without having a little more or less summing-up of the case. The precise question has been explained here; that is the mode of putting it. It is if Mr. Belknap thought that Hazen was the author of that article why did he not go to General Hazen? The testimony has already shown that Belknap was indignant at Hazen because he had violated the regulations of the Army and had not communicated what he pretended to know as a fact through the military channels, as it was his duty to do, but poured it out into the bosom of a congressional committee. The testimony also shows that Belknap did go to work investigating this matter through the proper channels. He wrote a letter to Grierson, who was in command of the post, and to Evans, and to others there, in regard to the matter. The letter of Mr. Grierson making his report is on the 18th of February. It was received about ten days after that, and the order correcting the whole thing was made on the 25th of March.

Is it possible that Mr. Belknap is to be condemned here because he did not select that particular method of investigation which the managers wish he had selected? He went to work regularly and efficiently. He did not wish to imitate the irregular conduct of General Hazen. Because Hazen had violated his duty and the regulations of the Army, it was not necessary that Belknap should also violate his duty, nor was it necessary that he should chase the newspaper or chase any correspondent of a newspaper; but he set immediately to work investigating through the regular military channels, where officers made their reports upon their character as officers and where if they were untrue they could be court-martialed for their untruth; not anonymous correspondence in newspapers, but regular official investigation, and on the 25th of March the whole matter was cured by the order of that date.

That is the state of facts. The question put to the witness is, did General Belknap go to you about this matter? They might as well call any other man in Washington and ask, "Did he go to you about it." Belknap was under no obligation to go to General Hazen. He went through the regular channel to the commander of the post. General Hazen was not the commander of that post, and if General Hazen had known anything of irregularities there while he was in command of the post the regulations of war made it his duty to communicate it through the military authorities, not through political and congressional channels, but to make it directly through the official military channels. Then it could be corrected according to the discipline of the Army.

The PRESIDENT *pro tempore*. The Chair will submit the question, Shall this interrogatory be admitted?

The question being put, there were on a division—ayes 15, noes 15; no quorum voting.

Mr. EDMUNDS. Let us have the yeas and nays.

Mr. ANTHONY. There is a quorum here. Let us have a further count.

Mr. EDMUNDS. I yield to the suggestion of the Senator from Rhode Island. Let us take another division.

Several SENATORS. Let the reporter read the question.

The question was read, as follows:

Q. After the publication of this article in the New York Tribune, state whether the Secretary of War, officially or otherwise, made any inquiry of you in regard to the truth of the statements contained in that article?

The PRESIDENT *pro tempore*. The question is, Shall this interrogatory be admitted?

The question was determined in the affirmative, there being on a division—ayes 19, noes 18.

Q. (By Mr. Manager McMAHON.) General, you will answer the question.

A. He did not.

Q. State whether you were in Washington City at any time after the publication of that article in the New York Tribune.

A. I was here under subpœna immediately after.

Q. State what were the relations between you and the Secretary of War up to February, 1872.

A. So far as I knew, they were perfectly friendly.

Q. You testified, I believe, before the Military Committee at that time?

A. I did.

Q. How long did you remain in the city of Washington?

A. I was here four days in all.

Q. Did you meet the Secretary of War during that time?

A. I think I did.

Q. There has been a criticism made upon your communicating this matter to the Military Committee instead of communicating it through the regular channels to the Secretary of War. State your views of that question.

Mr. CARPENTER. We object to that.

Mr. Manager McMAHON. You asked that question of General McDowell.

Mr. CARPENTER. You propose to swear down my argument. This witness's opinion upon the proper construction of the rules and regulations of war, which are statutes of the United States, as to

what his duty would be, might swear our arguments away, and we should not stand a fair chance.

Mr. Manager HOAR. Will the counsel allow me to ask him a question? Did not the learned counsel put this precise question to General McDowell?

Mr. CARPENTER. And on your objection I withdrew it.

Mr. Manager McMAHON. I beg your pardon. The court allowed it to be put.

Mr. CARPENTER. Very well. If that is so I can say nothing.

The WITNESS. My testimony before the committee had nothing——

Mr. CARPENTER. You are not interrogated about that testimony at all.

Mr. Manager McMAHON. We do not care about that, but simply why you made the statement before the Military Committee; that is, why you communicated the fact to them instead of communicating it to the Secretary of War?

The WITNESS. The main points of my testimony had been communicated several times through the military channels. It referred to the law of 1866 regarding the furnishing of these same stores by sutlers.

Mr. CARPENTER. The witness is called on for an essay on one subject and he is giving an essay upon another subject. He was inquired as to what his duty was in regard to communicating these facts through the military channels.

Mr. Manager McMAHON. I think the witness is entitled to a little fair treatment.

Mr. CARPENTER. We are entitled to our objection.

Several SENATORS. Let the question be read.

The question was read from the reporter's short-hand notes, as follows:

Q. There has been a criticism made upon your communicating this matter to the Military Committee instead of communicating it through the regular channels to the Secretary of War. State your view of that question.

Mr. EDMUNDS. I object to that question myself if counsel do not. I do not think the time of the court ought to be wasted with that sort of evidence.

The PRESIDENT *pro tempore*. Objection is made.

Mr. Manager McMAHON. I withdraw the question. (To the witness.) State why you did not communicate these facts directly to the Secretary of War.

A. The facts stated in my testimony had been communicated several times before.

Q. (By Mr. Manager McMAHON.) How?

A. By letters, official and otherwise, to the War Department; but they referred to different subjects.

Mr. CARPENTER. One moment——

Q. (By Mr. Manager McMAHON.) Did they refer to the Fort Sill matter?

A. They did. They referred to that and all other matters stated about the farming out of post-traderships.

The PRESIDENT *pro tempore*. The Chair will state that when an objection is made the witness shall withhold his answer.

Mr. CARPENTER. I want to know whose letters they were.

Mr. Manager McMAHON. I am examining the witness. (To the witness.) In these previous communications to the Secretary of War had allusions been made to the relations between Evans and Marsh?

Mr. CARPENTER. I object to that. There is but one way that these matters can be brought before the Secretary of War. The law provides how they shall be brought before him. When complaint is made in regard to any of these matters, the subordinate officer must make his report to his next superior, and so on through all the channels until it reaches some one who has the power to correct the abuse. That is the uniform course. Anything else is just as much hearsay as a conversation between anybody else. An official report made by an officer in pursuance of law would come with force. It is at all events a report which the law requires an officer to make; but the general talk and conversation, whether among officers and soldiers or laymen or citizens, makes no evidence here in this case. If there were any written reports made, let us have them. They are in the War Department. Let us know who made them, what they were made about, and then let us have the reports. They are a great deal better than General Hazen's understanding of what they were. I do not understand him to have read one of them or that he knows the contents of one of them except from hearsay.

Mr. Manager LAPHAM. Suppose the witness addressed to the Secretary of War directly a communication upon this subject instead of communicating to his superior officer or the officer next in command; would that make it any the less evidence in this case? The learned counsel talks about its being on file in the War Department. This is one of those semi-official communications which the defendant has appropriated to himself since his resignation.

Mr. CARPENTER. That is a mistake.

Mr. Manager LAPHAM. And we cannot get control of it.

Mr. CARPENTER. That is assumed.

Mr. Manager LAPHAM. Sir, we have a right to assume that if it is not a regular communication made to the War Department and is not on file. There is no such letter on file or in the archives of the War Department. If the letter was addressed to the Department upon this subject by the witness or by his direction, it is among the papers which the defendant has taken away from the War Department, which were there during his term of office, which were regularly indexed in a book kept for that purpose, and he has both the book and the letters. We gave notice to produce them, it is true, and we shall be at liberty, if they are not produced, to prove by this witness that such letters were sent and prove their contents orally by reason of their non-production. Surely this inquiry, it seems to me, Senators, is entirely proper and legitimate by way of ascertaining what communication, if any, was made to the Secretary of War by the witness or by his direction.

The PRESIDENT *pro tempore*. The Chair is informed that there is a message to be submitted from the House of Representatives. If there be no objection the proceedings of the trial will be temporarily suspended for that purpose.

A message was received from the House of Representatives.

After which,

The PRESIDENT *pro tempore*. The Senate resumes its session sitting for the trial of the impeachment.

Mr. CONKLING. May I inquire, if it is in order, whether these letters of which the witness has been speaking are letters written by him to the Secretary of War? I did not hear that part of his statement.

Mr. CARPENTER. That is the point I have been trying to find out for an hour.

Mr. Manager LAPHAM. It is just what we are trying to find out.

WILLIAM B. HAZEN'S examination continued.

Mr. CONKLING. I will ask, then, to have the question read that I may see whether it relates to communications made by the witness or communications that he has heard were made by somebody else.

The question was read by the reporter from his short-hand notes, as follows:

Q. In these previous communications to the Secretary of War had allusions been made to the relations between Evans and Marsh?

Mr. CONKLING. I should like to know as one member of the court whether these communications referred to are communications from the witness or somebody else. If the Senate will allow me, I would ask this question. (To the witness.) Were the communications to which you have been referring communications by you or communications that passed through you to the Secretary?

The WITNESS. They were communications from me written officially. I will say here, in correction of what I said before, that perhaps they did not refer to the Fort Sill matter. They referred to the farming out of post-traderships generally, but I will not say they referred directly to the post-trader at Fort Sill.

Mr. Manager McMAHON. We withdraw the question, then. That settles the controversy. That is, we withdraw the particular question we have put as to whether there was any reference in these letters to the relations existing between Evans and Marsh.

Mr. CONKLING. The witness says he does not know that there was.

Q. (By Mr. Manager McMAHON.) Where were you in February, 1872?

A. At Fort Hays, Kansas.

Cross-examined by Mr. CARPENTER:

Q. Did you in 1872 come before that Military Committee in obedience to a subpœna?

A. I did.

Q. Issued by whom?

A. Issued by the Sergeant-at-Arms of the House of Representatives.

Q. Did you not propose to the committee or to somebody else to be examined upon the subject before you were subpœnaed?

A. I proposed to give information in regard to the post-traderships before I was subpœnaed.

Q. To whom did you make that communication?

A. I made that communication to General GARFIELD.

Q. The chairman of the committee?

A. He was not the chairman of the Military Committee then. He was my friend at home through whom I did nearly all my correspondence with Washington.

Q. These letters which you speak of having sent about post-traderships, you say were official letters sent through the military channels?

A. Which letters do you refer to?

Q. The letters you have testified to.

A. I cannot remember whether they were official or semi-official. I do not remember about that.

Q. I understood you to say just now that they were official letters. Do you want to correct that statement?

A. I cannot say that they were technically official letters.

Q. You were commander at Fort Hays?

A. I was commander at Fort Hays.

Q. What was the regular military channel for communications from you with the Secretary of War about a matter of official business?

A. Through the Adjutant-General of the Army.

Q. At Washington?

A. At Washington.

Q. Your letter, if it was official, would be received by the Adjutant-General, marked in his office, and be traceable all through the various channels?

A. I suppose it would; but it would not necessarily refer to this subject here, but it would refer to farming out post-traderships.

Q. Have you any recollection about writing the letter?

A. I have, very distinctly?
Q. What is about the date of it?
A. I cannot give the exact date.
Q. How long was it written before you were examined before that Military Committee?
A. It was some time between 1866, when this business commenced, and the business I testified about, the farming out of tradership.
Q. The question is how long was your letter written to the Secretary of War prior to your being examined before that committee?
A. I do not remember.
Q. Was it before?
A. It was.
Q. How long, can you not tell?
A. I cannot tell.
Q. Can you not give us some idea, whether a month or two or a year?
A. I think it was about six months or a year.
Q. Did it go through the military channels?
A. It was sent through the regular channels. I never heard from it.
Q. Then would it not be indexed at the various headquarters?
A. I have no doubt.
Q. Will you not state where and at what places it would be indexed? Give me an idea of the military route.
A. It would be probably indexed in the office of the Adjutant-General of the Army.
Q. What is the military channel from you?
A. Directly to the Adjutant-General of the Army or it would go through the headquarters of the military department.
Q. Will you not explain to what places it would go, where it would be registered, if you did write such a letter? Where would it go first from Fort Hays?
A. It would go to Fort Leavenworth.
Q. That was to General Pope?
A. To General Pope.
Q. Where from there?
A. To General Sherman.
Q. Where was his office at that time?
A. At Saint Louis.
Q. Then he would send it where?
A. He would send it to the Adjutant-General.
Q. And the Adjutant would send it to the Secretary of War?
A. Yes, sir.
Q. Would it not go through Sheridan's headquarters?
A. I do not think he was then commander. If Sheridan was in command, it would go to him.
Q. You do not think Sheridan was in command at that time?
A. He may have been.
Q. Fix the time as near as you can when you wrote this letter recommending the correction of all these general abuses.
A. I think the letter was written in the last portion of 1871 or the first of 1872.
Q. Was General Sherman's office at Washington at that time?
A. It may have been.
Q. Where was it? It might have been anywhere. You knew where your superior officers resided and had their headquarters.
A. I think he was in Washington and General Sheridan was in Chicago.
Q. Do you not know that his office was in Washington?
A. Not without looking at the record.
Q. You do not know that Sherman's headquarters were in Washington the last of 1870 and in 1871, and you do not know that Sheridan's headquarters were at Chicago?
A. Upon reconsideration, I think they were. At that time I did not know.
Q. At what time did you not know?
A. At the time the question was first asked.
Q. You were in a department under the command of Pope?
A. I was.
Q. In a division under the command of Sheridan.
A. I was.
Q. In the Army under the command of Sherman.
A. I was.
Q. That letter, if you sent it, was indexed at all those places.
A. It was, if it did not miscarry; but it is possible it was not an official letter. I do not remember distinctly as to its character. If it was not an official letter it would not be filed.
Q. Let me ask you whether it was not your duty, if you became aware of any abuses at any posts within your command, to report them through the military channels to the Secretary of War?
A. Yes; and I think I did it.
Q. It was your duty to do so?
A. Yes.
Q. You think you did it?
A. I think I did.
Q. If you did, the letter would be indorsed in all these headquarters?
A. It would, if it passed through them.
Q. Have you any reason to suspect that the letter miscarried?
A. No; but I never received a reply to it.
Q. But you expect it was received through all these channels?
A. I think so.

Mr. CONKLING. I should like to understand it. Do letters go open to all these places to be seen?

Mr. CARPENTER. Certainly; and reviewed.

The WITNESS. If it was official. If not official, it would not be so.

Q. (By Mr. CARPENTER.) The letter would first have been seen by General Pope, next by General Sheridan, next by General Sherman, next by the Adjutant General, and then by the Secretary of War?
A. It would, if official.
Q. It would, if it was what you say you think it was?
A. Yes; that is what we are talking about.

Mr. CARPENTER. If the court please, I want to give notice to Crosby, a witness whom we have the right to cross-examine, the chief clerk of the War Department, to find the letter referred to by this witness and have it produced here to-morrow. Mr. Crosby is here and will hear the notice.

Mr. Manager MCMAHON. You might supplement that with a notice to your client if he happens to have it semi-officially to bring it out of the package in which it was that was taken from the Department.

Mr. CARPENTER. It does not happen to be there.

Mr. Manager MCMAHON. It might be.

Mr. CARPENTER. It would not be.

Mr. CONKLING. In this pause I beg to ask one or more questions. May I inquire whether such a letter going as this does through these several commanders receives from each one any indorsement either of approval or disapproval, or any other mark from him? (To the witness.) If, for example, General Pope receives it, does he mark it "approved" or "disapproved," or does he put any mark upon it?

The PRESIDENT *pro tempore*. The witness will answer.

The WITNESS. He can do either, as he sees fit.

Q. (By Mr. CONKLING.) Does he, in point of fact, do one?
A. Not necessarily.
Q. What does he say, "received and forwarded?"
A. "Received and forwarded," "approved" or "disapproved," or whatever other mark he sees fit.
Q. He puts some mark?
A. He puts some mark.
Q. (By Mr. CARPENTER.) Then that letter which you think you wrote communicated as much to General Pope, and to General Sheridan, and to General Sherman as it did to General Belknap, did it not?
A. It did, if it was read by them.
Q. That would be true of Belknap, would it not?
A. Yes.
Q. (By Mr. BLACK.) Such a letter is addressed to the immediate superior of the officer who writes it, is it not?
A. Yes.
Q. (By Mr. CARPENTER.) You say you testified before that committee under a subpœna?
A. Under a subpœna; yes, sir.
Q. Did you first write from your post to General GARFIELD that you should like to be subpœnaed, or words to that effect?
A. I wrote to General GARFIELD that I was coming east and would be in Cincinnati, and if it was required would come here.
Q. Had you been inquired of in any way about this matter?
A. No.
Q. Was it not your duty at that time, if you knew any fact whatever in connection with this business which was improper, to communicate through the regular military channels to the Secretary of War?
A. It was.
Q. Why did you select General GARFIELD rather than the Secretary of War, then?
A. I believed it would receive no attention if sent to the Secretary of War.
Q. For that reason you violated your own duty because you thought he would violate his? Is that it?
A. I cannot say. I gave the reason.
Q. Do you recollect writing a long letter to General Belknap dated September 12, 1875?
A. I do.
Q. Do you recollect writing it in these words——

Mr. Manager MCMAHON. Let him see the letter.

Mr. CARPENTER. O, no.

Mr. Manager MCMAHON. You have no right to cross-examine him in regard to the contents of a letter without submitting it to him.

Mr. CARPENTER. How do you find out that this is the letter? This may be a memorandum in my writing.

Mr. Manager MCMAHON. If you say it is a memorandum of a letter that was destroyed, no matter; but if you claim to have the letter, you cannot cross-examine him on it without putting it in his hand.

Mr. CARPENTER. I ask him "Do you remember in that letter using these words, in substance?"

Mr. Manager MCMAHON. We make objection, Mr. President and Senators, to the witness being asked any question as to the contents of a letter which the counsel apparently holds in his hand. If he does not have it, the objection at any rate goes to the point that it having been addressed to the defendant, the counsel must first show it to have been destroyed.

Mr. CARPENTER. Did the manager not here ask this very wit-

ness about a letter that was sent to the Secretary of War which he did not have?

Mr. Manager McMAHON. It is not on file.

Mr. CARPENTER. How do you know? If it was ever written, there is where it belongs. You had not proved search, or loss, or destruction, and yet you proved the contents of it. The law has not changed since you were examining this man in the direct examination.

Mr. Manager McMAHON. In answer I will simply say that we do not propose to refight any question of evidence which has been already settled. If the gentleman withheld to make his objection that was his fault, if my objection is good at the present time. Because I put a similarly improper question awhile ago and required to have it answered, it is no reason that the rules of evidence may be violated now.

The PRESIDENT *pro tempore*. The question will be read.

Mr. Manager McMAHON. We object before the question is put.

Mr. CONKLING. Let us hear the question.

Q. (By Mr. CARPENTER.) Do you recollect using these words, or substantially these words, in that letter to General Belknap, namely: "I was summoned to Washington to give evidence upon staff organization of the French and German armies. After finishing upon these subjects I was questioned upon the subject of post-traders. I at first remonstrated, on the ground that I had not reported the matter to you," (that is, the Secretary,) "because I believed the Commissary Department would defeat any action in that direction?"

Mr. Manager McMAHON. General, you need not answer the question. The objection is pending.

The PRESIDENT *pro tempore*. The Chair will submit the question to the Senate, Shall this interrogatory be admitted?

The question was determined in the negative.

The PRESIDENT *pro tempore*. The objection is sustained.

Mr. CARPENTER. Mr. President, if the Senate will pardon me just a moment, I did not state the ground of the question, because I thought it was apparent. The witness has just sworn to a totally different state of facts; that he came here on subpœna and was examined on this matter in obedience to the subpœna. On cross-examination we got from him the fact that he wrote a letter to General GARFIELD from his post. Now, here is a letter, or at least I am inquiring of him now if he did not write to General Belknap on the 12th of September, 1875, a totally different account of that transaction.

Mr. Manager McMAHON. You must put it in his hands for the purpose of impeaching him.

Mr. WALLACE. May I ask the counsel if it is competent to contradict the witness by giving a part of a conversation and not giving the whole of it that occurred at the same time; whether the witness is not entitled to have the whole of what was said at that particular time, and therefore the whole of this letter?

Mr. HOWE. May I ask for information, for I have not attended particularly so closely to the evidence as I should, has it already appeared in evidence that the letter, of the contents of which the counsel proposes to ask the witness, has been sought for and is not to be found? Has that appeared in evidence?

Mr. BLACK. We are not offering the letter in evidence; we are just asking the witness a question in regard to it.

Mr. CARPENTER. Senators will recollect that this witness testified here that he gave testimony before the House Military Committee because he thought if he conferred directly with the Secretary of War he would not pay any attention to it. He then swears he did write a letter and sent it through the regular military channels, communicating everything to General Belknap that he swore to before the committee. In this letter, of which I now question him, he writes, as we claim and offer to prove by him, that he did not report the matter to the Secretary for the reason that he knew the Commissary Department would not permit it to be done.

Mr. EDMUNDS. The letter will show.

Mr. Manager McMAHON. The letter will speak for itself.

Mr. CARPENTER. The letter I do not propose to give in evidence.

Mr. Manager McMAHON. Then you cannot have any evidence with regard to its contents unless you prove that it is destroyed.

Mr. MERRIMON addressed the Chair.

The PRESIDENT *pro tempore*. If there be no objection the order sustaining the objection will be reconsidered.

Mr. MERRIMON. That letter having been alluded to in the way it has been, it is due to the court and due the witness in the case that it should be put in evidence.

Mr. Manager McMAHON. Or else all allusion to it be stricken out of the record.

Mr. MERRIMON. I think it ought to be put in evidence.

The PRESIDENT *pro tempore*. The Chair will submit the question to the Senate.

Mr. CONKLING. What is the question now?

Mr. CARPENTER. What the Chair is going to submit to the Senate is whether the Senate is going to assume the examination of our case and introduce our proof or not. If we are so unfortunate as not to introduce sufficient proof, we shall suffer for it in the verdict; but do not let the court assume our side of the case. If it will, let it take both sides and we can go home.

Mr. CONKLING. What is the question?

The PRESIDENT *pro tempore*. The Senator from North Carolina made the point that the letter or paper in the hands of counsel should be put in evidence.

Mr. MERRIMON. I beg to state to the Senate that I should do it on this ground: they produce a part of a paper, and the whole of it should be put in evidence.

Mr. CARPENTER. We have not produced a paper any more than I have produced my watch from my pocket.

Mr. MERRIMON. I understood differently.

Mr. CARPENTER. I have not offered any paper to the court.

Mr. MERRIMON. Then I am mistaken about it. I understood that part of the paper was read, and that it was proposed to put in a part of the paper and not the whole of it.

Mr. BLAIR. Mr. President and Senators, it seems to me that the ruling of the Senate is made upon a rare misconception of the question submitted by my colleague in this case. Here is a witness upon the stand who testifies that he wrote a certain letter to the Secretary of War, semi-official or official, he does not know which, communicating facts in relation to abuses prevailing at these trading-posts in the Indian country, and that the reason why he did not go to the Secretary of War rather than go before the Military Committee to testify about these abuses was that he had written such a letter and that it had received no attention. Now, we want to ask him—and it is perfectly competent; no lawyer I think will deny the competency of it—whether he had not stated to another person on another occasion directly the contrary of that, stating the person and the time, leaving us the liberty of calling in that person, of calling for that letter, and showing that he is here stultifying himself and falsifying himself.

The PRESIDENT *pro tempore*. The Chair reminds counsel that there is no question before the Senate. The Senate has ruled upon this evidence.

Mr. LOGAN. Mr. President, I was rising to object to any discussion on this question after it had been once decided.

The PRESIDENT *pro tempore*. The Chair did not know what counsel was at, and when he saw what he was doing reminded him of the fact.

Mr. Manager McMAHON. I have an order that I should like to submit in justice to the witness, which I will reduce to writing. It is this: that in view of the fact that counsel on the other side refuse to produce this letter and that the counsel have undertaken to reflect upon the witness without giving him an opportunity to see the letter or to have the Senate inspect the entire contents of that letter, to reflect upon his truthfulness and his veracity, every allusion either in argument or in the question to this matter be stricken out of the record. I think it is due to a gentleman holding the position in the Army that the witness does in this case. I do not think it is fair or right or proper at all to treat him in this way. It is not dealing with the gentleman in the right shape.

Mr. CARPENTER. On the subject of that order I wish to say——

The PRESIDENT *pro tempore*. The manager will reduce his motion to writing.

Mr. MERRIMON. Mr. President, I should like to get the exact status of this matter. I see that I was inadvertently misled as to the exact state of the matter. I thought the paper had been offered and that it was proposed to give the Senate a part of it. Now if I understand it correctly, and I am not sure that I do, the purpose of the defense is to impeach this witness by showing that he has stultified himself on more than one occasion. If I am correct in that, and if it is proposed by any portion of this letter to stultify him, it is due to the witness as a matter of law that he should see the letter before he shall be required to testify. It should be put in his hands.

Mr. LOGAN. The question has been decided.

The PRESIDENT *pro tempore*. The question has been decided.

Mr. HOWE. I ask if the examination of the witness is concluded?

Mr. CARPENTER. O, no. The manager is drawing up an order to have it submitted.

Mr. Manager McMAHON. I withdraw it. Go ahead.

Mr. MITCHELL. Mr. President, I believe the order read a moment ago was wrong, and I shall move to reconsider. I do not know that any other Senator agrees with me. I move to reconsider the order overruling the question. I believe the question ought to be answered. I make the motion at any rate.

The PRESIDENT *pro tempore*. The Senator from Oregon moves to reconsider the vote just taken sustaining the objection to the question.

Mr. BLAIR. Now, Mr. President and Senators, before the question is put, I beg to continue for a single sentence the argument that I was submitting when I was interrupted as being out of order in arguing a question already decided. I said that I believed every lawyer in this body would recognize the principle that it was perfectly competent to ask a witness whether or not he had on a different occasion given a different account of the same subject than that he now offers.

Mr. LOGAN. Allow me to ask the counsel if the object of this question is to impeach the witness?

Mr. BLAIR. Certainly.

Mr. BLACK. No, not to impeach, to contradict.

Mr. BLAIR. That is an impeachment.

Mr. BLACK. It does not impeach him in his general character at all.

Mr. BLAIR. I call that impeaching him. The gentleman may call it by another name.

Mr. LOGAN. What I mean by "impeach" is what the word commonly imports, "contradict."

Mr. BLAIR. Yes, sir.

Mr. Manager McMAHON. Allow me to read for you a little elementary law Will you submit to the interruption?

Mr. BLAIR. Certainly.

Mr. Manager McMAHON. I think the Senate will discover that a while ago when I interrupted the witness when the contents of a letter were stated to him, I was right in regard to the law. I read now from an elementary book, Greenleaf on Evidence:

§463. A similar principle prevails in cross-examining a witness as to the *contents of a letter* or other paper written by him. The counsel will not be permitted to represent, in the statement of a question, the contents of a letter, and to ask the witness whether he wrote a letter to any person with such contents, or contents to the like effect, without having first shown to the witness the letter, and having asked him whether he wrote that letter, and his admitting that he wrote it. For the contents of every written paper, according to the ordinary and well-established rules of evidence, are to be proved by the paper itself, and by that alone, if it is in existence.

That is very simple; and I was right awhile ago, notwithstanding the overpowering weight of the gentlemen on the other side.

Mr. CARPENTER. It is of no consequence; the court sustained you.

Mr. Manager McMAHON. I was overruled in regard to stating the contents of the letter in your question.

Mr. BLAIR. I have not investigated the subject fully; but it seems to me perfectly plain that a party may be called upon to say whether he had not at a different time to a different person made a different statement; and this letter falls entirely within the common practice of allowing that a witness had made on a different occasion a different statement in regard to the same subject-matter.

Mr WALLACE. Is he not entitled to hear all that he said at that time?

Mr. BLAIR. We propose to give all that he said in relation to the particular subject, and we ask him the question whether or not he did not say that the reason why he had before gone before the committee, and not before the Secretary of War, was because he was here before the committee for another purpose, and that he did not go to the Secretary of War, not because he did not expect to have the Secretary attend to it, but because he was afraid to do so. We asked him whether he had said that thing. We might have asked him, without saying whether he had put it in writing or not, or we might produce his letter, as we chose. I do not care about arguing the question any further.

The PRESIDENT *pro tempore*. The Senator from Oregon [Mr. MITCHELL] moves to reconsider the vote by which the objection was sustained to the question proposed by the counsel.

The motion to reconsider was not agreed to.

Q. (By Mr. CARPENTER.) You say you recollect writing a letter to General Belknap about the 12th of September, 1875?

A. I do.

Q. That letter was marked "confidential," was it not?

A. I think it was.

Q. Are you willing to withdraw the confidence and allow the letter to be read in evidence?

A. I am willing that my letter shall be read.

Q. [Handing letter to witness.] See if that is the letter you wrote; and, if it is, read it.

A. [After examining.] This is my letter.

Mr. CARPENTER. Read it.

The witness read as follows:

[Confidential.]

FORT BUFORD, DAKOTA TERRITORY,
September 12, 1875.

MY DEAR GENERAL BELKNAP: As mentioned to you while here, I wish in perfect frankness to express what I think it is duty to myself to do. It is unnecessary to discuss the fact that I have felt that you have felt unfriendly toward me for a long time past, and I have no doubt with apparent good reason. For three years before you became Secretary of War I, with others, did what we could to do away with what we then thought and still think to be unwise and pernicious to the Army; that is, our system of sutlering, now called post-trading, with a view to substituting the plan employed in nearly all other respectable armies of supplying the articles necessary to officers and men at cost by one of the branches of the Army itself. This was finally accomplished and a law passed requiring the Commissary Department to perform that duty. That Department was opposed to the law, and upon the representation of "no special appropriation" were excused the first year from executing the law. Other reasons were afterward found for similar action, the Commissary-General making no estimates for it, till finally the law was passed giving us our present system, which is by far more objectionable than the original plan. I have always believed this law for post-traders was put through Congress under false representations, as its purpose specified in the text makes it for the benefit of the "traveling public," while it gave us back the old sutler, in which the "traveling public" is not interested the ninety-ninth part that the soldier is. This has also acted to leave the law causing the Army itself to furnish these articles a dead letter.

Seeing that we were defeated and the Army again encumbered with the old system, which is nothing less than a system of leeches applied to the pockets of the Army, (although personally the present sutlers are not objectionable men,) and that the objections of the Commissary Department virtually blocked any action in the matter and would defeat any attempts through the Army itself looking toward correction, I endeavored to call the attention of Congress to the subject through my old friend and schoolmate, General GARFIELD. I naturally gave the worst instances of the workings of the law I knew of, and these were instances of farming out licenses at heavy rates which were of course a tax to that amount upon the garrisons. In this there was nothing whatever intended to be personal to the Secretary of War, but merely examples under what I believed an odious law. I had no reason for being inimical to the Secretary, and I state but the exact truth in saying that only the highest regard and kindest feelings toward him always actuated me, with a single exception, to be referred to further on.

My letters to GARFIELD were to have been confidential so far as concerns their authorship, as my motives only referred to action on the law which I believed necessary to the Army. I desired especially not to appear in antagonism to the Secretary of War, as I then saw it would be easy to put such a construction on my action. My letters fell into the hands of one Smalley, secretary of the House Military Committee, who was also New York Tribune correspondent. He not only published the purport of my letter, adding as much as he saw fit, while enlarging on other points so as to make a very different matter of it as published, but although not mentioning my name, so describing his authority as to at once put it upon me.

Soon after, when Mr. Coburn was chairman of the committee, I was summoned to Washington to give evidence upon staff organization of the French and German armies. After finishing upon these subjects I was questioned upon the subject of post-traders. I at first remonstrated on the ground that I had not reported the matter to you, because I believed the Commissary Department would defeat any action in that direction, and that my testimony might be considered a discourtesy to the Secretary. Mr. Coburn then replied that whatever I might say upon the subject would be confidential with the committee. I then gave the facts as I had before done to General GARFIELD. My testimony was, however, openly published.

About this time, feeling that after a long and successful fight in which we had gained a substantial good, we were about being defeated by the simple fact that seemed to me the paltry selfishness of the branch of the Army whose duty it was to carry out the law, which did not benefit them but merely added slightly to their duties, and I receiving much censure for my action in this matter, in my great irritation I did write an intemperate letter to either GARFIELD or Coburn, in which I used many of the phrases found in Smalley's statement. I was in a manner put on trial, and the letter was (so to speak) extorted from me, and I have always regretted it. Whether it came to your notice or not, I ask pardon for ever writing it.

For everything else in the whole matter I have been guided conscientiously by a desire to effect what I believe a great advantage to the Army, the saving to it of $2,000,000 annually, more even than its late increase of pay, besides ridding it of a corrupting influence, the present system having many of the features of bribery and extortion, as goods are usually sold to officers at cost and to others at a high profit, while the system of farming (not unusual) adds an additional cost which must be paid by the troops. I have tried before to get this matter before you, but it meets its usual barrier in the Office of the Commissary-General. I inclose a case of it. The law referred to in that letter was a mandatory one of perfectly plain construction, one in which troops on the frontier are interested to the extent of about $2,000,000 annually; and the construction referred to in that letter is not understood either in fact or in justice, only that it has been opposed from the first by the Department whose duty it was to carry it out. The objection made by these officers "that it is not in keeping with their other duties," or "that it is unbecoming their positions," is not tenable, as they already keep for the benefit of both officers and soldiers a large list of articles without detriment or complaint of a not dissimilar nature. The Government could furnish a cigar for two cents that the trader charges twenty for. The English government furnishes it for a penny and the German government for half a penny. Other necessary articles, (indispensable in fact,) such as towels, brushes, stationery, &c., are on the same footing, but less exaggerated.

When in Washington three years ago, I was more gratified than I can tell you by the kind reception you gave me. Later there was a change, the cause of which I never knew. I know, also, that some of my overzealous friends have troubled you and the President to ask favors for me. But they did so against my expressed wish and request. Your subsequent order respecting officers coming to Washington, &c., led me to believe you thought I had busied myself in matters of general legislation upon Army matters, and officers of staff have said that I was the author of the Coburn bill, which they had seen in my handwriting. So entirely untrue is all this that, feeling certain that many would charge me with this on account of my book, I was especially cautious, and never conversed that winter with any member of Congress at any time upon Army matters of a general nature, and I have before me a letter from General Coburn, stating that I never saw the bill or any of its provisions till after it was introduced in Congress.

I did aid in the restoration of Captain Jocelyn, being partially in fault for his discharge.

I have felt the past three or four years that I was suffering from some unjust impression at the War Department, and it has been a sore and painful wound to me. I don't believe I am a bad, insubordinate, or insincere man. I have tried all my life to do right and industriously to do my duty. If you think I ever wronged you it was certainly not from my heart, and I regret to have caused the impression. I unfortunately have one or two enemies of high rank in the Army who I sometimes think wrongfully prejudice me in the eyes of those above me. If I have omitted anything which you would care to have further explained I shall be but too glad to be given the opportunity.

I am, most respectfully,

W. B. HAZEN.

The Honorable Secretary of War W. W. BELKNAP,
Washington, D. C.

Q. (By Mr. CARPENTER.) I understood you to say when you commenced testifying here a few moments ago that you testified before the Military Committee because you thought the Secretary of War would not attend to the matter.

A. I thought so at that time.

Q. Did you think so when you testified just now?

A. I did not think anything about it.

Q. I understood you to say here to-day that you went before that committee and testified because you were fearful the Secretary of War would not attend to the matter.

A. I was at that time.

Q. And you had written a letter to the Secretary of War.

A. No, not to the Secretary of War, but to the Adjutant-General, which would probably go to him. I will say in that connection that I do not know whether it was an official letter or not.

Q. Does not this letter change your recollection in several particulars?

A. No.

Q. You say in this letter that you have tried and tried in vain to get the matter before the Secretary of War.

A. I had.

Q. That they always lodged in the Commissary Department.

A. Yes.

Q. Now let me ask you in connection with this letter which you say you did write, what is your present impression about that, whether that was to the Secretary of War or not?

A. It is my impression that it was to the Adjutant-General or Secretary of War, but it is so long ago that I do not know whether it was a public letter or private letter, and I do not know its contents.

Q. You say in this letter written to General Belknap in 1875, describing your interview with the committee and your testimony:

I at first remonstrated—

That is, against answering about post-traders—

upon the ground that I had not reported the matter to you.

Now what do you think upon the question of whether you had reported the matter to him? You say here in 1875 that you at first remonstrated with the committee against swearing upon the subject because you had not reported it, as you ought to have done of course, to the Secretary of War?

A. I think I did report it. I think I did report it in the way I have spoken of, but I am not certain that it ever reached him because, as I have said, I received no reply.

Q. Did you ever do anything more than write that one letter, which you do not know whether it was official or not?

A. That was the letter I referred to.

Q. Here in 1875 you say that when you were before the committee in 1872 you remonstrated against swearing before them upon the ground that you had not made any report to the Secretary of War. Now that letter you say was written before that testimony.

A. I think it was written before.

Q. You answered that you could not tell how long before, but that it was before.

A. It was.

Q. [Handing a newspaper slip.] Did you write a letter of which that is a copy?

A. [After examining.] I did.

Mr. CARPENTER. So much has been said, Mr. President, in the country and by the managers about General Hazen's having been banished into the arctic regions by General Belknap that I want to read this letter in evidence. One of the managers the other day alluded to it in the course of the trial.

Mr. Manager McMAHON. We object to this letter going in because we have offered no testimony on that question.

Mr. CARPENTER. The statement was made by the manager here in the trial.

Mr. Manager McMAHON. But suppose you were to undertake to rebut by evidence everything a manager may say during the trial?

Mr. CARPENTER. We should have a great deal of trouble, but we propose to follow you as long as our lives last.

Mr. Manager McMAHON. I will say to the gentleman that we expressly avoided putting any question to General Hazen in regard to that matter, as the Senate will bear witness. These little side issues I think have nothing to do with the case.

Mr. CARPENTER. They have a great deal to do with the reputation of General Belknap.

Mr. Manager McMAHON. General Belknap's reputation is only at stake so far as the facts of this case implicate it. If he can rebut those facts, all right.

Mr. BLAIR. Mr. President, we beg leave to call the attention of the Senate to the fact that in connection with the introduction of a piece of testimony here the other day and to show the *animus* and vindictiveness, as the gentleman remarked, of the Secretary of War toward General Hazen because of that testimony, he said that General Hazen had been banished to the arctic regions because he had communicated these facts to the public. Now we want to show that all that is untrue. We have a right to show it by General Hazen's own testimony by calling the attention to his published letter.

Mr. CARPENTER. We propose to fortify the opinion of General Hazen by the facts.

Mr. Manager McMAHON. We withdraw the objection and you may read the letter, and we will reserve the right to ask General Hazen questions about it.

Mr. CARPENTER. Certainly we would not deprive you of that right.

The PRESIDENT *pro tempore*. The letter will be read.

The Chief Clerk read as follows:

CINCINNATI, OHIO, *May* 20, 1876.

EDITORS OF THE PIONEER PRESS AND TRIBUNE:

In connection with your article of the 12th instant, in which my name is made to appear, I have to request that you also insert the inclosed slip from the Army and Navy Journal. I think this is but fair to me.

I am, respectfully,

W. B. HAZEN.

[The letter alluded to by General Hazen is the following, addressed to the editor of the Army and Navy Journal:]

CINCINNATI, OHIO, *May* 14, 1876.

MY DEAR COLONEL CHURCH: In your issue of yesterday you say:

"We saw considerable of General Hazen while he was in New York, and certainly never heard him hint at any such cause (meaning my action taken four years ago respecting post-traders) for being ordered to Dakota."

Neither you nor any other person ever heard me say so, but many persons have heard me contradict the rumor, which has given me great annoyance, and my excuse for continuing this matter in print must be that it has already been brought there in a manner requiring my notice.

The order came almost immediately after I had testified before the Military Committee and under circumstances of peculiar hardship, before I was fairly settled at the post I was then at, and when I was seriously ill from an old wound, which rendered me unfit to travel for two months and for duty for more than a year. This, with the sad domestic affliction resulting from the journey incident to the order, naturally enough connected the two, my testimony and the order, in the minds of many as cause and effect. Their belief seemed confirmed by unguarded expressions of the Secretary and those supposed to reflect his views as to the length of service I might expect there, as well as by the fact that, although stationed for four years in the midst of the Indian country, where active expeditions were frequently sent out of which my own regiment formed a part, I have been invariably kept at my post, while sometimes a majority of my regiment has gone to make up the command of an officer junior to me in rank. These appearances have not only attracted the notice and comment of my personal friends, but of a large portion of the Army. I state again that the rumor never came from me, but on all proper occasions I have contradicted it, until recently I have paid no attention whatever to it.

I have known from the first that the order did not emanate from the War Department, and have believed and always said that in making the selection, direct reference was had to military reasons.

W. B. HAZEN.

Mr. CARPENTER. Now we offer to show in this connection the official orders from the War Department. In the first place the President orders Mr. Belknap, Secretary of War, to send a regiment of infantry to Dakota, designating nothing. Then Mr. Belknap——

Mr. Manager McMAHON. We propose to object to all this. We did not object to the letter, but we are not trying General Hazen. The gentleman seems to forget that we are trying General Belknap.

Mr. CARPENTER. Is that all the objection?

Mr. Manager McMAHON. That is the objection.

Mr. CARPENTER. Then let me finish the offer. The offer is to show that the President ordered Mr. Belknap as Secretary of War to send a regiment of infantry to Dakota; that Belknap ordered General Sherman to send a regiment of infantry to Dakota; that Sherman ordered General Sheridan to send a regiment of infantry to Dakota; that Sheridan ordered General Pope to send a regiment of infantry to Dakota, and Pope designated the Sixth Infantry of which Colonel Hazen happened to be colonel. That is all the connection Belknap had with that transaction, and there is the proof of it. [Holding up a bundle of papers.] We offer these papers.

Mr. Manager McMAHON. We object, and I will state the ground of our objection. We have given no evidence on this point. We concluded the examination of General Hazen without asking him when or where he was ordered after he had given the testimony before the House committee. We did so because we did not desire to encumber this record or this case with any other question except the one legitimately before the Senate. We did it because we were aware of General Hazen's own letter from which we might have drawn our own conclusions, but we care to draw none now and have made nothing upon it; and, as I repeat to the gentleman, he is endeavoring in this case to try a side issue, that side issue being in the first instance whether General Hazen had told the truth about a particular matter; and in the second instance (which has no connection with this case) whether General Belknap sent him to the frozen country because General Hazen testified before the Military Committee.

Mr. CARPENTER. Will the manager allow me to interrupt him?

Mr. Manager McMAHON. Yes, sir.

Mr. CARPENTER. I understand you to say that you knew of this letter of General Hazen showing that Belknap was in no fault whatever about his being sent to Dakota. I should like now to know whether it was before or after you had that knowledge that you made the charge here as manager that Belknap sent him to the frozen regions.

Mr. Manager McMAHON. I derived that impression, if I made that expression, from what I supposed General Hazen had said.

Mr. CARPENTER. I wish in justice, then, to the manager to concede that he would not have said any such thing if he had that knowledge at the time.

The PRESIDENT *pro tempore*. If there be no objection the proceedings of the trial will be suspended to receive a message from the House of Representatives.

A message was received from the House of Representatives.

After which,

The PRESIDENT *pro tempore*. The Senate resumes the impeachment trial. Objection was raised to the submission of certain documentary evidence. The Chair will submit the question to the Senate, Shall the papers be admitted?

The question was decided in the negative.

WILLIAM B. HAZEN'S examination continued.

Mr. CARPENTER. We are through with the witness.

Re-examined by Mr. Manager McMAHON:

Q. Was the letter which has been read in evidence here marked "confidential" in answer to a letter received or did it grow out of a personal interview?

A. It grew out of a personal interview.

Q. Where?

A. At Fort Buford.

Q. You can state now what that interview was between you and General Belknap.

A. It was to the effect that I thought there was a misunderstanding in our relations and had been; that my testimony before the committee four years before referred directly and specially to the faulty system of post-traders; and the matter that came in there respecting himself was entirely a side issue and came in incidentally, and I had requested that there should be nothing said about it; but I reported that it was a matter which I considered was very important the committee should know, as it was bringing the office of the Secretary of War into great criticism, inasmuch as his relations to certain parties to whom this——

Mr. CARPENTER. One moment. I should like to know what the question is that is being answered.

Mr. Manager McMAHON. He is answering that this letter grew out of an interview between him and the defendant.

Mr. CARPENTER. Then let him state what he said and what the defendant said.

Mr. Manager McMAHON. That is what he is doing.

Mr. CARPENTER. I do not understand it so.

Mr. Manager McMAHON. I do. To test it I will put a question. (To the witness.) Are you not now, General, testifying to a conversation between you and General Belknap?

A. I am.

Q. (By Mr. CARPENTER.) Distinguish between what you said and what Belknap said.

The WITNESS. I said to him that I felt that I had been unjustly construed; that I thought there was a misunderstanding growing out of my testimony before the committee four years before, and that I desired that he permit me to address him fully on the subject. I went into some detail of my testimony at that time; I will not pretend to trace it now. He told me he wanted me to write him fully and frankly; and that was the reason the letter was written. I said to him specially that my testimony before the Military Committee did not refer to himself, but did refer to the faulty system of post-traders, and their being farmed out; and that I did not consider myself responsible for the gossip that had grown up.

I wish also to say with regard to my testimony before the Military Committee four years ago that I was called there principally as stated in that letter to testify with regard to the German and French staff organizations, and the other was a branch of the subject.

Q. (By Mr. Manager McMAHON.) As a matter of fact, how had the personal relations been between you and the Secretary of War in the three years preceding this interview at Fort Buford?

A. They had been very unsatisfactory to me, as I had many reasons for believing he did not feel kind to me.

Re-cross-examined by Mr. CARPENTER:

Q. Where was this conversation?

A. At Fort Buford, Dakota Territory.

Q. I know, but whereabouts was it, on the steamboat just as the boat was ready to start?

A. It may have been on the steamboat or it may have been in my headquarters.

Q. How long did the conversation continue?

A. Perhaps five minutes; not long.

Q. Did he ask you at that time about your own post-trader, what sort of a man he was?

A. Yes.

Q. Did you make report on that subject?

A. I reported to him, but ——

Q. [Handing a paper.] See if that is the report. Is that the reply you made bearing on the subject?

A. [After examining.] That is my letter.

Q. Who was the post-trader there?

A. Mr. Leighton.

Q. And you reported him all right?

A. All right, and have since recommended him for re-appointment.

Mr. CARPENTER. (To the managers.) Do you care for this letter?

Mr. Manager McMAHON. No; we do not want Mr. Leighton.

Q. (By Mr. CARPENTER.) You say you had special reasons for thinking the Secretary of War felt unkind to you. State anything the Secretary of War ever did to justify you in thinking he was unjust to you, or what he ever did that was unjust to you.

A. I know of no acts he did that were unjust to me. I do not think he ever did an unjust act to me.

Q. You say you never think he did an unjust act to you?

A. I do not remember of any.

Q. Is not that about all that can be expected in official relations? Do you not know that the Secretary of War did recommend you to go upon a board for the revision of Army regulations?

A. I know he did. I was grateful to him for it, but I requested General Sherman not to permit me to go, as I had been already on that style of duty more than I wanted to be at that time, and General Sherman put another man on the board.

Q. Do you say that General Sherman did that at your request?

A. I do not know that he did it at my request; but when he was at my post at Fort Gibson some six months before I did request him to see that I was left at the post and not put upon detail duty.

Q. [Handing a paper.] Did you ever see that letter, or a letter of which that is a copy?

A. [After examining.] I never saw it.

Q. Does that refresh your recollection any?

A. Not at all. I have no recollection about it.

Mr. CARPENTER. We offer in this connection an order for a telegram between General Sherman and——

Mr. Manager HOAR. I desire to ask the honorable counsel if, considering that this whole matter rests on a statement in the opening which has been disclaimed by the managers and as we have allowed you to go so far as to show that letter, it is worth while to take up the time of the court by pursuing this vindication of his treatment of the witness any further?

Mr. CARPENTER. I do not know how far that opening speech may have struck through the Senate. It did not make much impression on me, because I did not take any stock in it.

Mr. Manager HOAR. I should think after spending an hour on the subject it ought to be sufficient.

Q. (By Mr. CARPENTER.) I understand you to say that in no act did the Secretary of War do you injustice, and here is at least one act in which he tried to do you a favor?

A. I know of no special act in which he was unjust to me.

Q. Do you not know a special act in which he tried to further what he supposed your wishes were by this promotion on this board?

A. That is true; however, I did not wish it at the time.

Q. But General Sherman opposed it on the ground that you had had too many favors already?

A. Yes.

Q. (By Mr. Manager McMAHON.) Without stating what had been reported to you, you can say whether you had heard reports as to what the Secretary and those connected with him had said in regard to you?

Mr. CARPENTER. What is that?

Mr. Manager McMAHON. He has stated already that the relations between him and the Secretary were not satisfactory. You have put the inquiry to him simply as to whether the Secretary did any unjust act. Now the question I put is this: Without giving the details of any conversation or any report that was made to you, state the fact whether reports were made to you of statements in regard to you by the Secretary of War and those connected immediately with him?

Mr. CARPENTER. Do you really insist on that question?

Mr. Manager McMAHON. It is as good as a great many of yours.

Mr. CARPENTER. If you want to keep this witness here three weeks, ask the question; I shall not object; but you will have a large chapter.

Mr. Manager McMAHON. We withdraw the question.

Mr. CARPENTER. I thought you would.

The PRESIDENT *pro tempore*. Are the managers through with the witness?

Mr. Manager McMAHON. Yes, sir.

The PRESIDENT *pro tempore*. The witness is dismissed.

Mr. Manager McMAHON. I will state, Mr. President, that two or three of our witnesses have not yet appeared; we have no witnesses now to-day that we can examine unless it be Mr. Whitney, if he has separated those telegrams; or you can put Mr. Crosby upon the stand now and put such questions to him as you see fit in cross-examination.

Mr. CARPENTER. We prefer to call Mr. Crosby after he has had an opportunity to find that letter from General Hazen. We want him to search for that in the Department and be here with it to-morrow.

Mr. Manager McMAHON. It is understood now that he is offered for cross-examination, and if you wait for your case we shall insist that he is your witness and must be examined according to law.

Mr. CARPENTER. We shall submit to the law as cheerfully as you have all the way through.

LEONARD WHITNEY recalled and examined.

Question. (By Mr. Manager McMAHON.) Have you made the search we spoke of on Saturday?

Answer. Yes, sir.

Q. Have you found any other telegrams than those submitted?

A. I found some among those that I submitted on Saturday. I made the selections as you requested.

[The witness selected a number of dispatches and handed them to the managers.]

Mr. Manager McMAHON. There is nothing there except what we have already the originals of, and you can retire, Mr. Whitney.

The PRESIDENT *pro tempore*. The witness is excused.

Mr. Manager McMAHON. Mr. President, I will state to the court that we have now no witness present that we can examine, probably, until after the examination of Mr. Marsh is completed, and but one or two then, except Evans and Fisher; and if not inconvenient to the Senate and a waste of public time, I would suggest modestly that the Senate as a court of impeachment might very properly give counsel a rest at this time by an adjournment.

Mr. CONKLING. How many more witnesses have you to examine?

Mr. Manager McMAHON. We have Evans and Fisher. We have some other witnesses subpœnaed; but they are for rebuttal.

Mr. CONKLING. I mean in chief.

Mr. Manager McMAHON. Probably three more.

Mr. ANTHONY. Are they in the city?

Mr. Manager McMAHON. Evans and Fisher are not in the city The other is in the city, but we have not been able to reach him.

Mr. Manager HOAR. We do not expect to call Fisher, if Evans comes.

Mr. Manager McMAHON. We will call Mr. ROBBINS, of the House, now.

Hon. WILLIAM M. ROBBINS called.

Mr. Manager McMAHON. We are informed that Mr. ROBBINS is confined to his bed by illness, and we shall have to make an arrangement to get some other witness.

Mr. CARPENTER. As it seems that we shall adjourn at this point, probably, I want to suggest to the managers whether they are not

willing to adjourn the trial over to-morrow. The Senate having other business enough to do will not be at leisure or out of business, and that will give us an opportunity to look over our testimony on the part of the defense and put it in just as rapidly as it can be put in. I will save the day, I believe in the time of the Senate, if they will allow me for to-morrow to get the defense ready so that we can get it in hand and rush it through.

Mr. KERNAN. How long will your testimony take?

Mr. CARPENTER. Two days, I think. It may go three; but I think two will do. I will put in the case on the part of the defense as fast as possible.

Mr. KERNAN. I move that the Senate sitting as a court for the trial of the impeachment adjourn until to-morrw.

The motion was agreed to; and (at four o'clock and forty-nine minutes p. m.) the Senate sitting for the trial of the impeachment adjourned.

TUESDAY, *July* 11, 1876.

The PRESIDENT *pro tempore*. The hour of twelve o'clock having arrived, the Senate will proceed to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap.

The usual proclamation was made by the Sergeant-at-Arms.

The PRESIDENT *pro tempore*. The House of Representatives will be duly notified.

Messrs. LYNDE, MCMAHON, JENKS, LAPHAM, and HOAR, of the managers on the part of the House of Representatives, appeared and were conducted to the seats assigned them.

The respondent appeared with his counsel, Messrs. Blair, Black, and Carpenter.

Mr. THURMAN. I now move that the proceedings of the court be suspended for half an hour in order to go into legislative session.

Mr. CARPENTER. I am told by some Senators that the Committee on Appropriations are anxious to go on with their work this morning. I find myself thoroughly sick and unable really to stay here to-day, and the managers, I understand, would have no objection if the Senate would adjourn over until to-morrow. Mr. Evans has not arrived, so that no time would be lost, and it would be a great accommodation to me personally, and I do not see that it would harm any body or delay any thing.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from Ohio, [Mr. THURMAN] that the proceedings of the court be suspended for half an hour.

Mr. WINDOM. I ask consent to say a word with reference to the request of the counsel.

The PRESIDENT *pro tempore*. Is there objection? The Chair hears none, and the Senator from Minnesota will proceed.

Mr. WINDOM. I think that no time would be lost by the Senate in acceding to that request. The Committee on Appropriations have the river and harbor bill ready to report to-day, and we can act upon it to-morrow. It is desirable, I think, that it should be acted upon before we conclude the trial.

Mr. EDMUNDS. That makes two days then.

Mr. WINDOM. I thought the request was to adjourn over to-morrow, instead of to-day.

Mr. CARPENTER. My request was to adjourn until to-morrow.

Mr. WINDOM. I misunderstood the request. The reason I gave would not apply to to-day.

Mr. CONKLING. I move to amend the motion of the Senator from Ohio, so that the Senate sitting for this trial adjourn until to-morrow, which will be at twelve o'clock.

The PRESIDENT *pro tempore*. Simply to adjourn will be until to-row at twelve o'clock. The Senator from New York moves that the Senate sitting in trial adjourn.

The question being put, there were, on a division—ayes 13, noes 15; no quorum voting.

Mr. EDMUNDS. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. Manager MCMAHON. Before the vote is taken, I simply desire to say to the Senate that I think the statement of the gentleman was entirely too broad that the managers had agreed to the postponement.

Mr. CARPENTER. I said that I understood the managers would make no serious objection to it.

Mr. Manager MCMAHON. So far as the managers are concerned, of course they prefer that the trial shall go ahead immediately.

The question being taken by yeas and nays, resulted—yeas 17, nays 24; as follows:

YEAS—Messrs. Allison, Bogy, Conkling, Cooper, Dawes, Ferry, Hamilton, Howe, Ingalls, Kelly, Logan, McCreery, Mitchell, Morton, Sherman, Thurman, and West—17.

NAYS—Messrs. Anthony, Booth, Bruce, Cockrell, Davis, Edmunds, Frelinghuysen, Harvey, Hitchcock, Kernan, Key, Merrimon, Morrill, Norwood, Oglesby, Paddock, Patterson, Ransom, Robertson, Wallace, Whyte, Windom, Withers, and Wright—24.

NOT VOTING—Messrs. Alcorn, Barnum, Bayard, Boutwell, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Caperton, Christiancy, Clayton, Conover, Cragin, Dennis, Dorsey, Eaton, Goldthwaite, Gordon, Hamlin, Johnston, Jones of Florida, Jones of Nevada, McDonald, McMillan, Maxey, Randolph, Sargent, Saulsbury, Sharon, Spencer, Stevenson, and Wadleigh—31.

So the motion was not agreed to.

The PRESIDENT *pro tempore*. The question recurs on the motion of the Senator from Ohio [Mr. THURMAN] that the trial be suspended for half an hour.

Mr. CONKLING. I hope not. Let us go on.

The motion was not agreed to.

The Secretary proceeded to read the journal of the proceedings of the Senate sitting yesterday for the trial of the impeachment of William W. Belknap.

Mr. HOWE. Mr. President, I move that the further reading of the journal be dispensed with.

The motion was agreed to.

The PRESIDENT *pro tempore*. The Senate is ready to proceed with the trial.

CALEB P. MARSH recalled:

Mr. Manager MCMAHON. Before you proceed, Mr. Carpenter, let me put him one question. I may bring it in after awhile; but I prefer to do it in this connection. (To the witness.) Mr. Marsh, state whether you remember the Secretary of War being at your house to dinner at any time shortly prior to the publication of the article in the New York Tribune.

A. He has been at my house to dinner, but I cannot fix the date.

Q. (By Mr. Manager MCMAHON.) Do you remember any occasion when Mr. Reid and General McDowell and he were there together?

A. Yes, sir.

Q. When was that?

A. I cannot tell you. It is some years ago. I cannot even tell the year with any certainty.

Cross-examined by Mr. CARPENTER:

Q. Had you prior to the time when these ladies were at your house made any application or had any thought of procuring a tradership?

A. It seems I was in Washington early in August from a letter which has been shown me, in which I state that I called on the Secretary of War.

Q. I ask you for your present recollection. Have you any recollection now of having made any application or having had any thought of it prior to the time these ladies were at your house?

A. I have no recollection except from that letter—no recollection at all.

Q. What letter is it that you speak of?

A. A letter that has been read here and shown to me.

Q. Where did you first see General Belknap; was it not at Long Branch?

A. The first time I saw him must have been in Washington, from this letter.

Q. Are you swearing from your recollection or from this letter as to that fact?

A. From the letter.

Q. Entirely from the letter?

A. Entirely.

Q. From your recollection without the letter see if you do not remember that you first saw him at Long Branch.

A. Without the letter I should say the first time I saw him was when he came to my house in September to bring the two ladies to Washington; I do not remember seeing him at Long Branch.

Q. Let me see if I cannot refresh your recollection about it. Do you not, remember that Mr. Belknap and his wife were staying at Long Branch; Mrs. Marsh was at Long Branch; you came there and was introduced to Mr. Belknap; Mr. Belknap went from there to Iowa to make a speech at Des Moines at some military meeting there, and returned from Iowa to your house in New York; do you not remember that you found Mrs. Belknap sick at your house; do you not recollect that circumstance?

A. I am not positive of having seen him at Long Branch; it is quite possible; it is many years ago; I may have done so.

Q. There was some talk between you and the Secretary of War about your being appointed post-trader instead of Evans or yourself, Evans not being mentioned in connection with it at first?

A. Yes, sir. When I first called upon him he was not mentioned.

Q. Was there are any corrupt agreement or any agreement between you and Mr. Belknap in regard to being appointed post-trader at Fort Sill?

Mr. Manager MCMAHON. We object to the word "corrupt." Say "any agreement." I think by using the word "corrupt" you are asking an opinion of the witness. The objection we make is that the question calls for an opinion as to the character of the agreement instead of calling for the agreement itself.

The PRESIDENT *pro tempore*. Do counsel modify the question?

Mr. CARPENTER. I do not want to argue the question of the propriety of that interrogatory.

The PRESIDENT *pro tempore*. The Chair sustains the objection.

Mr. CARPENTER. Read the question.

The PRESIDENT *pro tempore*. The reporter will read the question.

The question was read by the Official Reporter, as follows:

Q. Was there any corrupt agreement or any agreement between you and Mr. Belknap in regard to your being appointed post-trader at Fort Sill?

Mr. CARPENTER. I understand the interrogatory is objected to, and the objection is sustained by the court.

The PRESIDENT *pro tempore*. The whole interrogatory the Chair considers overruled. If counsel desire, the Chair will submit it to the Senate.

Mr. CARPENTER. No; I will put another question. (To the witness.) Was there any agreement on your part to pay Mr. Belknap any money in consideration that he would appoint you post-trader at Fort Sill?

A. There was not.

Q. (By Mr. CARPENTER.) At any time?

A. At any time.

Q. Was there ever any agreement between you and Mr. Belknap that you should pay him any pecuniary consideration for or in consideration of his appointing Mr. Evans post-trader at Fort Sill?

A. There was not.

Q. Was there ever any agreement between you and Mr. Belknap that you would pay him any money or other valuable consideration in consideration of his continuing Mr. Evans as post-trader at Fort Sill?

A. Never.

Q. So far as you know was not the only inducement leading to that appointment the kindness which you and your wife had shown to Mrs. Belknap at your house?

A. That certainly had a great deal to do with it, I presume.

Q. Did you make or claim to have any bill against him for anything done for Mrs. Belknap?

A. No, sir.

Q. Your treatment of her was entirely gratuitous?

A. Yes, sir.

Q. But of course led to a feeling of friendship between the families?

A. Yes, sir.

Q. You say that the friendship which arose from the fact that Mrs. Belknap had been sick at your house, and been kindly treated, had a great deal to do with that appointment; was there, apart from that friendly feeling, any consideration moving from you to Belknap to procure that appointment?

A. None.

Re-examined by Mr. Manager McMAHON:

Q. The letter of August 16, 1870, has been referred to in cross-examination. Was that letter properly dated?

A. As far as I now remember.

Q. Have you any recollection of improperly dating it at any time?

A. I have not.

Q. After having seen that letter, I understand you to say that you and the Secretary had had a conversation about post-traderships some time in August?

Mr. CARPENTER. I object to that question.

Mr. Manager McMAHON. It is a repetition. We withdraw the question. (To the witness.) Do you remember upon any occasion when Evans & Co. made payment in a check of Northrop & Chick to you for $500?

Mr. BLAIR. We object to that question.

Mr. Manager McMAHON. I simply want to call the witness's recollection to a particular time.

Mr. BLAIR. We object to any question not growing out of our cross-examination.

Mr. Manager McMAHON. This comes right in your line, as you will see presently. (To the witness.) Do you remember the fact?

The WITNESS. Am I to answer?

Mr. CARPENTER. Not at present. We insist on the objection.

Mr. Manager McMAHON. State the objection.

Mr. CARPENTER. We have simply cross-examined this witness. We have shown nothing whatever, nor have we attempted to show anything whatever, except what is legitimate matter of cross-examination. They may re-examine in regard to the new matters we have called out in cross-examination, but nothing else. They cannot go on now and by this witness attempt to show any consideration or anything of that kind, because that is a part of their case; they have examined the witness upon that subject and called out from him such evidence as they could and passed him over for cross-examination, and they cannot return to it now.

Mr. THURMAN. I wish to suggest that even if the question is not strictly responsive to the cross-examination, it is in the discretion of the court to permit it to be answered.

The PRESIDENT *pro tempore*. The reporter will read the question.

The question was read, as follows:

Q. Do you remember upon any occasion when Evans & Co. made payment in a check of Northrop & Chick to you for $500?

The PRESIDENT *pro tempore*. Shall this interrogatory be admitted?

The question being put, it was decided in the affirmative.

Mr. Manager McMAHON. Answer the question.

The WITNESS. I do not remember.

Q. (By Mr. Manager McMAHON.) Do you remember any occasion when he made a payment in a check of $500 that you returned to him, without remembering the name of the person?

A. I remember returning him a check, but I do not remember the amount. I think it was more than one.

Q. Do you remember writing him a letter at the time you returned a check to him? I do not ask for the contents of the letter.

A. I think I do.

Q. (By Mr. CONKLING.) Was the answer of the witness that this was more than once?

A. More than one check, I think.

Q. (By Mr. Manager McMAHON.) You remember writing a letter to Evans & Co. about that matter?

A. I think the letter was to Fisher. It might have been to Evans & Co., or to Fisher, one of the partners.

Mr. Manager McMAHON. That is all.

Mr. MITCHELL. I send a question to be put to the witness.

The PRESIDENT *pro tempore*. The question put by the Senator from Oregon will be read.

The Chief Clerk read as follows:

Q. Why did you send to W. W. Belknap, Secretary of War, the one-half of the various sums of money received by you from Evans at Fort Sill?

Mr. CARPENTER. Mr. President, the celebrated Jeremiah Mason in the trial of a very important case once said, when a judge put a question to a witness, he being counsel for the defense, that if the question was put on the part of the plaintiff, he objected to it; if it was put on behalf of the defendant, he withdrew it.

Mr. MITCHELL. It is put in behalf of justice.

Mr. CARPENTER. The Government have gone through the examination of this witness; we have cross-examined him; the court has allowed them to go partially into a redirect examination, and they have concluded it. This question put by the managers now would certainly be objectionable, and I presume that we have the same right to object to a question put by the court that we would have if it were put by the managers.

The PRESIDENT *pro tempore*. If there be no objection, the question will be put.

Mr. CARPENTER. There is objection. That is clear. We object.

The PRESIDENT *pro tempore*. The Chair will submit this question to the Senate, Shall this interrogatory be put?

Mr. PATTERSON and others. Let the question be reported.

The Chief Clerk read the question of Mr. MITCHELL, as follows:

Q. Why did you send to W. W. Belknap, Secretary of War, the one half of the various sums of money received by you from Evans at Fort Sill?

Mr. CONKLING. As I am called upon to vote upon this question, if it is in order I should like to make an inquiry. Is it intended to call for the motive of the witness, or is it intended to call for any fact or thing which influenced him? I wish the Senator who puts it would make it a little more pointed. If it is a call for the motive of the witness, I cannot vote for it for one. If it is a call for any fact, I can.

Mr. MITCHELL. Mr. President, it is not, of course, in order to argue the question. I think the question calls for a fact. It calls for the reason why this money was sent. I shall insist on the question.

Mr. CARPENTER. Mr. President and Senators, I want to say a few words further on my objection to this question. You will all recollect that the examination of this witness by the prosecution was very singular and peculiar. You will recollect that I over and over again objected, objected to their going into it by piecemeal and scraps and collateral facts and circumstances, and asked them to push him right into the narrative and let him tell all there was about this matter. I was rebuked by the leading manager and informed that I knew far less about the management of their side of this case than they did. I of course had to submit to that, and did cheerfully. No doubt it is true; but what does it indicate? It indicates simply this, that the prosecution here on the part of the House of Representatives have a scheme of examining this witness.

It was manifest, I think to everybody, where the weakness of this case lay when they had to dodge around the case the way they did in the examination yesterday. Now they have set us an example which we have a right to follow, when the House of Representatives, after being requested to do it, refused to ask this general question and put this witness into the general narative of the transactions between him and everybody else important to this inquiry, and confined him only to specific facts and circumstances, against our objection over and over again made. Then we called the witness and put him on the stand for a cross-examination, putting no improper question, not a question that the managers have objected to, and he has answered our questions. They have had one redirect examination, the court overruling our objection to it, to give it to them. Now after this will this court permit the managers to return to that subject and open the examination of this witness? And if they will not permit the managers to do it, will the court do it themselves? If a question cannot be objected to when put by one of the court which would be ruled out if put by the counsel, then this is a strange proceeding and we are in a singular situation. I say this of course with entire respect to the Senator who asks the question; but we must have a right to

object to the question, and for the purpose of testing whether it is proper or improper, it must be considered as a question put by the managers, and put by the managers at this time, is there the slightest doubt that the Senate would rule it out?

The PRESIDENT *pro tempore*. The question is, Shall this interrogatory be admitted?

Mr. THURMAN. Let it be read.

The PRESIDENT *pro tempore*. It will be again read.

The Chief Clerk read the question of Mr. MITCHELL, as follows:

Q. Why did you send to W. W. Belknap, Secretary of War, the one-half of the various sums of money received by you from Evans at Fort Sill?

Mr. ANTHONY. I wish to ask whether the counsel object to this interrogatory at this time or whether they object to it altogether?

Mr. CARPENTER. Both; because it is out of time and because it is an improper question.

The PRESIDENT *pro tempore*. The question is on the admission of this interrogatory.

The question being put, it was determined in the affirmative.

The PRESIDENT *pro tempore*. The question will be answered.

The WITNESS. Simply because I felt like doing it. It gave me pleasure to do it. I sent him the money as a present always, gratuitously. That is the only reason I had.

The PRESIDENT *pro tempore*. Are there any further questions to be put to the witness?

Mr. EDMUNDS. Mr. President, I should like to ask the witness a question; the reporter can take it down if the Chair will allow it. I should like to ask the witness, in connection with his last answer, whether General Belknap knew, in advance of these remittances from time to time, how large the present was going to be that was to be sent?

Mr. CARPENTER. Mr. President, I object to that question upon the ground that one man cannot swear what another man knows. It is physically and intellectually impossible. If he could say that he told Mr. Belknap a thing, if he could prove any fact, that fact may be proved; but could I be put on the stand to swear what the Senator from Vermont knows upon any subject? I should say he knows all about it, but any particular knowledge on a particular subject I could not be called to swear to. Nobody can.

Mr. BLAIR. Mr. President and Senators, there is another objection to this question that I hope the Senate will consider before voting that this question shall be admitted, and that is that this witness is a Government witness, and that the interrogatory of the Senator is to impeach the witness on the part of the prosecution. It implies that he has not stated the truth.

The PRESIDENT *pro tempore*. The question will be repeated by the reporter.

The question was read, as follows:

Q. Did General Belknap know, in advance of these remittances from time to time, how large the present was going to be that was to be sent?

The PRESIDENT *pro tempore*. Shall this interrogatory be admitted?

The question was decided in the affirmative.

The PRESIDENT *pro tempore*. The witness will answer the question.

The WITNESS. I cannot say how far he knew, I am sure.

Q. (By Mr. EDMUNDS.) Did you know yourself how large the presents were to be in advance?

A. Certainly. That is, I made up my mind that I would send him the half that came to me from the fort.

Mr. LOGAN. I desire to propound a question which I send up in writing.

The PRESIDENT *pro tempore*. The question of the Senator from Illinois will be read.

The Chief Clerk read as follows:

Q. Prior to the sending of the first money, had you said anything to any person or had any person ever said anything to you on the subject of sending money to General Belknap; if so, who was it?

Mr. CARPENTER. Mr. President, it is impossible to ascertain from this court, it being so numerous, as we do always in conversation with a court of law, what is the point involved in the decisions which have been made. I would like to ask whether the opinion of the Senate is that we cannot object to a question put by a Senator or whether the questions have been ruled in upon the ground that they were proper questions?

The PRESIDENT *pro tempore*. The question of the Senator from Illinois [Mr. LOGAN] will be repeated.

The Chief Clerk read the question of Mr. LOGAN.

The WITNESS. Am I to answer?

Mr. CARPENTER. Wait a moment.

The PRESIDENT *pro tempore*. Do counsel object?

Mr. CARPENTER. Yes, Mr. President, on consultation we object to the question.

The PRESIDENT *pro tempore*. Shall this interrogatory be admitted?

The question was decided in the affirmative.

The PRESIDENT *pro tempore*. The witness will answer the question.

The WITNESS. I had a conversation with the present Mrs. Belknap on the night of the funeral in Washington.

Mr. Manager LAPHAM. That was after the first money was sent.

Mr. Manager MCMAHON. The question calls for conversation before any money was sent.

The WITNESS. That was before I had sent any money to him. I had sent a remittance to her.

Mr. Manager MCMAHON. Go on.

The WITNESS. Does the question call for conversation?

Mr. EDMUNDS. No.

Mr. LOGAN. I will now add, let him state what the conversation was.

Mr. Manager MCMAHON. I object to that at this stage of the case. This may excite the risibility of the honorable gentlemen on the other side; but I think I shall be able to give a very good reason for it.

Mr. FRELINGHUYSEN. I should like to hear the answer of the witness as far as given.

The PRESIDENT *pro tempore*. The reporter will read.

The answer was read, as follows:

That was before I had sent any money to him. I had sent a remittance to her.

Mr. Manager HOAR. That answer is a little ambiguous. It had better be made certain. He has spoken of the present Mrs. Belknap, and says, "I had sent a remittance to her;" let him state to whom.

A. I mean Mrs. Belknap, deceased.

The PRESIDENT *pro tempore*. The managers have objected to the question, and the Chair will submit it to the Senate.

Mr. EDMUNDS. That is the question that calls for the conversation?

The PRESIDENT *pro tempore*. Shall this be admitted?

Mr. HOWE. Let the question as it is put be reported.

The question was read by the reporter, as follows:

Q. State what the conversation was.

Mr. WHYTE. What conversation is referred to? We did not hear the ground of the objection made by the manager. I presume that the absence of General Belknap would be one objection if he was not present at the conversation. We did not hear what objection was made by the manager.

Mr. Manager MCMAHON. Even if General Belknap was present, while we might have called it as against him, he cannot produce it as in his favor. It is the conversation of a third party.

The PRESIDENT *pro tempore*. Shall this interrogatory be admitted?

Mr. HOWE. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. Manager MCMAHON. Before the vote is taken, Senators, I desire that all shall understand the precise conversation now called for. It is a conversation between the witness and the present Mrs. Belknap, occurring on the night of the funeral of the second Mrs. Belknap, between the witness and her, not in the presence of General Belknap; a conversation between the two persons on that occasion. Clearly it seems to me the defendant is not at liberty to produce that conversation in his behalf.

Mr. CONKLING. And it was after the first money had been sent to the former Mrs. Belknap?

Mr. Manager LAPHAM. Yes, sir.

Mr. FRELINGHUYSEN. I should like to ask whether the conversation which is inquired for is not the same conversation as to which the court inquired whether it had taken place.

Mr. CONKLING. Certainly it is.

The PRESIDENT *pro tempore*. The Secretary will call the roll.

The question being taken by yeas and nays, resulted—yeas 18, nays 23; as follows:

YEAS—Messrs. Allison, Booth, Bruce, Conkling, Cragin, Ferry, Frelinghuysen, Harvey, Hoar, Ingalls, Logan, Morrill, Morton, Paddock, Patterson, Sherman, West, and Wright—18.

NAYS—Messrs. Bogy, Caperton, Cooper, Dawes, Edmunds, Gordon, Hamilton, Kelly, Kernan, Key, McCreery, Maxey, Merrimon, Mitchell, Norwood, Ransom, Robertson, Stevenson, Thurman, Wadleigh, Wallace, Whyte, and Withers—23.

NOT VOTING—Messrs. Alcorn, Anthony, Barnum, Bayard, Boutwell, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Clayton, Cockrell, Conover, Davis, Dennis, Dorsey, Eaton, Goldthwaite, Hamlin, Hitchcock, Johnston, Jones of Florida, Jones of Nevada, McDonald, McMillan, Oglesby, Randolph, Sargent, Saulsbury, Sharon, Spencer, and Windom—31.

The PRESIDENT *pro tempore*. The objection is sustained.

Mr. DAWES. I should like to have a question put, which I send to the Chair.

The PRESIDENT *pro tempore*. The question of the Senator from Massachusetts will be read.

The Chief Clerk read as follows:

Q. State all the knowledge or information that General Belknap had, which it is in your power to state, as to the amount of any money sent him or the source whence it came, other than what you have already stated.

Mr. CARPENTER. To that question we object.

Mr. LOGAN. Before the point is submitted, I will state that the first question I propounded was not objected to by the Senate. The last one was objected to. I desire to have that first question fully understood, and I ask the Clerk to read it again to the witness and have it answered before we proceed to another question.

The PRESIDENT *pro tempore*. The interrogatory propounded by the Senator from Illinois will be read.

The Chief Clerk read as follows:

Q. Prior to the sending of the first money had you ever said anything to any person or had any person ever said anything to you on the subject of sending money to General Belknap; and, if so, who was it?

A. No one that I remember. No other except what I have already stated, the conversation with Mrs. Bower.

The PRESIDENT *pro tempore*. The Senator from Massachusetts [Mr. DAWES] proposes a question, which will be read.

The Chief Clerk read as follows:

Q. State all the knowledge or information that General Belknap had, which it is in your power to state, as to the amount of any money sent him or the source whence it came, other than what you have already stated.

Mr. DAWES. I do not desire to have the witness state over again what he has already stated.

The PRESIDENT *pro tempore*. Objection being raised the Chair will put the question to the Senate: Shall this interrogatory be admitted?

The question was decided in the affirmative.

The WITNESS. I have stated all the money that I have sent General Belknap, as far as I can remember.

Mr. Manager LAPHAM. That is not the question.

Mr. EDMUNDS. Read the question again.

The PRESIDENT *pro tempore*. The Secretary will read the question.

The Chief Clerk read as follows:

Q. State all the knowledge or information that General Belknap had which it is in your power to state as to the amount of any money sent him or the source from whence it came other than what you have already stated?

A. O, I do not know anything about General Belknap's knowledge; I know nothing of General Belknap's knowledge except the money I sent him.

Mr. MORTON. I submit the following interrogatory:

Q. Did General Belknap personally or through any person or by letter ever inquire of you why this money was sent, and did you in any way ever assign a reason to him for it?

A. Never, to my best recollection.

Mr. CONKLING. I propose a question which may have been answered in substance, but I should like to have an answer to it:

Q. Was your intention to send money to General Belknap and your act in sending it in consequence of any communication between you and General Belknap, and, if there was any such communication, state it?

A. No, sir; there was not.

Mr. Manager McMAHON. The managers would like to put a question now, if convenient.

Mr. CARPENTER. I object.

Mr. Manager McMAHON. We certainly claim the right.

Mr. LOGAN. I have a question to propose.

The PRESIDENT *pro tempore*. The Senator from Illinois desires to submit a question.

Mr. Manager McMAHON. We waive the right to put ours while Senators are asking questions.

The PRESIDENT *pro tempore*. The interrogatory of the Senator from Illinois [Mr. LOGAN] will be read.

The Chief Clerk read the question of Mr. LOGAN, as follows:

Q. Did you have any understanding with any person other than General Belknap in reference to sending the money you have testified to or any part of it? If so, with whom was such understanding, and what was such understanding?

A. I had an understanding on the night of the funeral. I had some conversation with Mrs. Bower, the present Mrs. Belknap.

Mr. Manager McMAHON. We object that that is only getting indirectly at the same matter that has already been settled by the Senate.

The PRESIDENT *pro tempore*. The Chair has submitted each of these questions, and will also submit this, to the Senate.

Mr. LOGAN. I wish to state merely the object of my question.

The PRESIDENT *pro tempore*. Is there objection? The Chair hears none, and the Senator will state it.

Mr. LOGAN. There seems to be a kind of vagueness about this thing, and my object is, if there was an understanding under which this money was sent, to get at the understanding, what it was, and with whom it was. I cannot see that that can be objected to. There must have been an understanding with somebody, and I want to know whom it was with. That is all there is in the question.

Mr. EDMUNDS. He has stated that he had not any conversation with anybody in the world but one.

Mr. Manager LAPHAM. The learned Senator will doubtless remember that there may be implied as well as express understandings. Our objection is that this calls for a conversation with a third person, and is the precise question upon which the Senate has already passed. The witness having stated expressly that he had no conversation with the defendant, the question calls for some express conversation, some expression, agreement, or understanding, and not for an implied or inferential understanding from the acts of the parties.

Mr. CARPENTER. Let me inqure of the manager whether he admits that there was no express agreement?

Mr. Manager LAPHAM. Not at all.

Mr. LOGAN. I will change the language of the question in one particular. Where it says "understanding" I will use the word "agreement."

The PRESIDENT *pro tempore*. The Secretary will report the question as modified.

The Chief Clerk read as follows:

Q. Did you have any agreement with any person other than General Belknap in reference to sending the money you have testified to or any part of it? If so, with whom was such agreement and what was such agreement?

Mr. BLAIR. Mr. President and Senators, this question is substantially the same, in my own judgment, as that upon which this body has already ruled. Senators will bear us witness that we have uniformly objected to this mode of examination. We think that, as the parties here have represented it, they ought to be allowed to conduct their own case. The other side have chosen to rest their case upon a mere technicality by creating a presumption from the transmission of money that there was an agreement that that money should be transmitted to us in pursuance of an understanding. We have met that presumption by the witness flatly contradicting it, and they are therefore out of court on the case they have made. It is perfectly apparent to any logical, reasoning mind that the implication which they seek to bring against us of an understanding or agreement that we should receive money on account of an appointment which the party here made is utterly and absolutely rebutted by their own witness. Now, the attempt is to contradict that witness; to make him testify to circumstances which will contradict that direct, plain statement.

Mr. Manager HOAR. Would it be agreeable to the learned counsel to permit me to put a question to him?

Mr. BLAIR. Not at this stage of the argument.

Mr. Manager HOAR. I will not do it then.

Mr. BLAIR. I want this body to have a fair understanding of the case. We are here ready and willing and prepared to meet this whole case. If they will go into it, and give this picture its clothing and coloring, and let the Senate and country see the whole of it, and drag these persons, all of whom are mixed up in it, before the Senate and the country, let them do it; we cannot object; but when they choose to rest their case upon proof of the reception of money, and thereby seek to imply an agreement, and when we come in and rebut that distinctly by showing there was none, by their own witness, it seems to me that the Senate ought to hesitate before they make another case for these gentlemen and go piece-meal in attempting to rebut this testimony. Having gone as far, however, as the Senate has chosen to go in this matter, it does seem to me that when a Senator wishes to know the truth and to have an explanation of how it happens that money was sent to this person, when there was no agreement between him and this person to have it sent, it is perfectly legitimate to have the truth of that and to show at whose instance and by whose request this money was transmitted to some person claiming the money in that way. These gentlemen know, because the facts are spread far and wide—they are facts of record—that there was a person who claimed this money as her own and that she directed this money to be sent in this mode.

Mr. Manager McMAHON. There is nothing of that in the case.

Mr. BLAIR. There is not anything of it in the case, but it is a fact known to the country and known to us.

Mr. Manager McMAHON. It is not known to us.

The PRESIDENT *pro tempore*. Managers will not interrupt the counsel without their permission.

Mr. BLAIR. It is known to you and it is known to the Senate that there was some arrangement by which this money was sent in that form; and now, when it is sought to know by what arrangement and what person it was, it is objected to. It will lighten the burden of the defendant to know that there was another person claiming this money. It seems the gentlemen do not want to lighten our burdens, but whenever they can get a piece of testimony that will weigh upon us it is very fair; they put it in by scraps; but the whole truth, and nothing but the truth, they do not want to know. They only want to have the Senate know what will criminate this defendant, and not what will exculpate him. Now I will answer any question the gentlemen desire to ask.

Mr. Manager HOAR. Have you got through your address to the Senate?

Mr. BLAIR. If you have any question to put, I will answer it before I sit down. You said you had a question to put.

Mr. Manager Hoar. But I do not propose to ask it now.

Mr. THURMAN. I should like to ask the counsel a question. I want to understand from him whether he objects to this question being answered or whether he wants it answered.

Mr. BLAIR I do not object to it. I did object on general principles to the whole series; but as these questions are going in, I should like to have the Senate let something in on our side. They are letting in everything else that is brought against us. I should like to see a little fair play.

Mr. Manager HOAR. Mr. President, the question that I proposed to put to the learned counsel would have conveyed an idea which I will convey directly to the Senate. I suppose if a judge were on trial on an impeachment for bribery, and it turned out that a certain suitor had a case once a year for six years, and it were proved that a bag of money containing $3,000 as passed up by that suitor to the bench

every time the case came on, it would not be necessary to go any further and prove an agreement——

Mr. BLAIR. That is argument on the merits.

Mr. Manager HOAR. It would not be necessary to go any further and prove an agreement to receive that money corruptly. Now suppose that were the state of the proof in the case I have supposed, would it be material in defense to show that the bag of money was passed up to the judge at the request of the judge's wife once a year? That is the whole of the present proposition.

Mr. FRELINGHUYSEN. Mr. President, I should like unanimous consent to make one remark. As I understand it, the court, exercising its privilege and against the objection of the respondent, permitted it to be proven that there was a conversation which had relation in some manner to these payments. I think it is the right of the respondent that that conversation should now be given. It was the court, not the respondent, who introduced the fact that there was such conversation that had relation to these payments. I do not think we can fairly exclude the conversation.

Mr. EDMUNDS. Mr. President, if I were at liberty to say anything, as I am not——

The PRESIDENT *pro tempore*. The Chair hears no objection.

Mr. EDMUNDS. I shall object myself; but if I were at liberty I should say that I did not agree with the law of my friend at all; but I cannot go into a debate here upon the subject and shall not undertake to do it.

The PRESIDENT *pro tempore*. The Secretary will report the question.

The Chief Clerk read as follows:

Q. Did you have any agreement with any person other than General Belknap in reference to sending the money you have testified to or any part of it? If so, with whom was such agreement and what was such agreement?

The PRESIDENT *pro tempore*. Shall this interrogatory be admitted?

The question being put, a division was called for; and the ayes were 18.

Mr. LOGAN. I ask for the yeas and nays.

The yeas and nays were ordered; and being taken, resulted—yeas 25, nays 21; as follows:

YEAS—Messrs. Allison, Booth, Bruce, Conkling, Conover, Cragin, Dawes, Ferry, Frelinghuysen, Harvey, Hitchcock, Howe, Ingalls, Logan, Mitchell, Morrill, Morton, Oglesby, Paddock, Patterson, Sherman, Wadleigh, West, Windom, and Wright—25.

NAYS—Messrs. Bogy, Caperton, Cockrell, Cooper, Davis, Dennis, Edmunds, Gordon, Hamilton, Kelly, Kernan, Key, McCreery, Merrimon, Norwood, Ransom, Stevenson, Thurman, Wallace, Whyte, and Withers—21.

NOT VOTING—Messrs. Alcorn, Anthony, Barnum, Bayard, Boutwell, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Clayton, Dorsey, Eaton, Goldthwaite, Hamlin, Johnston, Jones of Florida, Jones of Nevada, McDonald, McMillan, Maxey, Randolph, Robertson, Sargent, Saulsbury, Sharon, and Spencer—26.

So the question was decided in the affirmative.

The PRESIDENT *pro tempore*. The witness will answer the question.

Mr. CARPENTER. Let the question be repeated.

The PRESIDENT *pro tempore*. The Secretary will report the question.

The Chief Clerk read as follows:

Q. Did you have any agreement with any person other than General Belknap, in reference to sending the money you have testified to, or any part of it? If so, with whom was such agreement, and what was such agreement?

A. I had a conversation with Mrs. Bower, the present Mrs. Belknap, on the night of the funeral. She asked me to go up stairs with her to look at the baby in the nursery. I said to her, as near as I can remember, "This child will have money coming to it after a while." She said, "Yes; my sister gave the child to me, and told me the money coming from you I must take and keep for it." I am not certain about the rest of the conversation. I have an indistinct impression of what was said afterward. I said, very likely, "All right; but perhaps the father ought to be consulted," and her reply was that if I sent the money to him she would get it any way for the child, or something of that kind. That is as far as I remember it; but I had some understanding; I have sometimes thought that I said something to General Belknap that night. My entire recollection is indistinct about the matter, except her relation of her sister's dying request made an impression on me more than any other part of the conversation. As I said before, I have sometimes thought I said something to General Belknap about it, but I am not at all certain. At all events I had some understanding that night or subsequently before the next money came due—and I do not remember of any subsequently—by which I sent the money to General Belknap.

Mr. Manager McMAHON. Mr. President, if the witness is through I desire to ask a question now.

Mr. DAWES. I wish to put a question which I desire to have answered.

The PRESIDENT *pro tempore*. The Senator from Massachusetts submits an interrogatory, which will be read.

The Chief Clerk read as follows:

Q. Did you or any other person to your knowledge ever explain to General Belknap what "Southwest" means in your letters informing him that you had a remittance for him? If so, state the explanation.

A. Never to my knowledge.

Mr. Manager McMAHON. I propose now to propound the following question:

When you sent General Belknap the first letter notifying him that you had a remittance for him "from the S. W.," state whether he inquired of you by letter or otherwise from what source the money came?

Mr. CARPENTER. That we object to, because we object to the managers returning to this case.

Mr. Manager McMAHON. The managers certainly have a right to come in now.

Mr. CARPENTER. What gives them that right?

Mr. Manager McMAHON. To make a further explanation to the Senate.

Mr. CARPENTER. Mr. President, both parties have made this case to the Senate as they have chosen to make it; and the court has gone through in its own way, searching for facts, and, I understand, has rested also. Now is it possible that the parties are to take this case up again and have any rights they would not have, arising from the examination as it took place on their part respectively? They cannot go back with such a question certainly, unless it be on account of some questions that the court has put; and that certainly cannot renew their right. They put this witness on the stand and exhausted him as far as they thought it was safe to do so; then we cross-examined him; both parties rested; and now the court has rested. Now we protest that the managers cannot ask any more questions of this witness.

Mr. Manager McMAHON. Mr. President, I have heard a great deal from one of the distinguished counsel on the other side and something from another in regard to getting this case in by piecemeal, and I have heard a great deal of criticism on the manner in which I have done it; and I expected my honorable friend [Mr. Carpenter] to ask this court to nonsuit the Government from the remarks which he made upon one occasion, that we had made no case, &c. The only answer I have to that is that if we have failed to put in the facts in this case to convict their client, they ought to be under the most everlasting obligations of gratitude to us for our want of capacity in managing the case.

Mr. CARPENTER. That is on the ground that you stop now.

Mr. Manager McMAHON. I accept the statement of the gentleman and the interruption, because it leads me directly to the next point I am about to make. The other gentleman [Mr. Blair] keeps complaining all the time that we do not introduce the whole truth. Now the honorable gentleman [Mr. Carpenter] had the opportunity to cross-examine this witness, to put every interrogatory to him that he chose, and if our examination were short, which it was not, theirs certainly was extraordinarily brief and, in my judgment—I say it here—substantially a confession of the facts and circumstances in this case.

But now, to go further. I understand even the order in which a witness is examined in a court of justice to be always a matter within the discretion of a court. A witness who has been fully discharged and gone may be called back and asked a question because something new has been developed in the case; and often—it is so laid down in the elementary books—you may recall a witness who has been absolutely discharged to ask him whether upon a certain occasion at a certain place he did not say so and so to A B, for the purpose of calling A B right there to contradict him. That is a very common practice.

Now after the Senate has in the exercise of its discretion put further questions to this witness and eliminated a part of the truth from his bosom, what we want now is directly in the same line to put a question throwing light upon the very questions that have been put, and it is this: "When you sent General Belknap the first letter notifying him that you had a remittance for him 'from the S. W.,' state whether he inquired of you by letter or otherwise from what source the money came?"

If the defendant in this case is an innocent man and had no business transactions with Caleb P. Marsh and had nothing in this letter to notify him that this money was for Mrs. Bower or the child or anything else, but simply "I have a remittance for you from the Southwest," if he is an honest man, a man of high integrity in his Department, is he going to fob the money without making any inquiry from Mr. Marsh by letter "Why, what is S. W.; where does this fund come from; what do you mean, Mr. Marsh; you do not owe me any money; you are not trustee for any of my relations that I know of; to what account shall I pass this $1,500?" Ah, the objection comes from a confession of guilt, from a knowledge of guilt, a desire not to put in the whole truth as the gentleman [Mr. Blair] complains that we do not put it in, but from a desire to exclude the whole of it.

Mr. CARPENTER. Mr. President, will the manager allow me to interrupt him a moment?

Mr. Manager McMAHON. Yes, sir.

Mr. CARPENTER. The objection to this question is that it is out of time, and I want to ask the manager if he thinks that objection makes in order an argument on the merits of the case and the guilt of this defendant?

Mr. Manager McMAHON. I will say in all candor to the gentle-

man who has just taken his seat that if he and his associates only possessed the gift to see themselves as they see others, they would not be so critical in their criticisms upon our conduct? My honorable friend there [Mr. Blair] never rises to discuss a question but what he talks to the merits, always telling us about some defense that is to come, always expressing that sublime and childlike confidence in his client's innocence, that there is not a single fact yet in this case to warrant. Have I no right to talk about the facts that are in the case; have I no right to repel the statement here that we are endeavoring to exclude the whole truth? By all means I have the right, and I say here that I have the right to call for an answer to this question to throw light upon this important matter and to let us see whether in this matter he did have knowledge when he was receiving this money as to the source from which it may have come.

Mr. BLAIR. Mr. President and Senators, I know what the gentleman says to be true that a witness may be recalled at any time at the discretion of the court; but the court presides over the trial and looks after the interests of justice, and therefore it is within the competency of the court, as every lawyer knows, to allow a witness to be recalled. But I appeal to this court and to its discretion and ask this court to consider whether it is just to allow this witness to be recalled and re-examined in the manner that it is now sought to do when the gentlemen have made their case, exhausted the witness, turned him over to us and we made a very brief cross-examination, and now when the manager seeks to have the last word of this witness and to reiterate and ding-dong in the ears of the Senate every time he makes a speech denunciations of our client as if he was appealing on the last argument of the case? I appeal to the Senate and to the justice of the Senate to know whether such a course of examination ought to be tolerated.

Mr. CONKLING. Mr. President, in the hope of saving time, I ask to have read again a question put by the Senator from Indiana [Mr. MORTON] and the answer to it which I think covers this very question. If it does, perhaps we shall get along.

The PRESIDENT *pro tempore*. The question will be read.

The Chief Clerk read the following question propounded by Mr. MORTON:

Q. Did General Belknap personally, or through any person, or by letter, ever inquire of you why this money was sent; and did you in any way ever assign to him a reason for it?

Mr. CONKLING. That covers everything except the "S. W.," which is practically included. The answer was that he never did.

Mr. Manager McMAHON. If that is the understanding of the Senate, we withdraw this question. Of course I do not wish to multiply the evidence of the same thing. If that covers the ground in the opinion of the honorable Senator, we withdraw the question.

The PRESIDENT *pro tempore*. The question is withdrawn.

Mr. HOWE. If the court has not closed its case, I should like to have the question answered which I send to the Chair.

The PRESIDENT *pro tempore*. The question of the Senator from Wisconsin will be read.

The Chief Clerk read as follows:

Q. Was the money which you sent to General Belknap designed for his use or for the use of some other person?

A. I sent it to him originally according to what I have heretofore stated occurred on the night of the funeral. It may be presumed that it was sent for the child, but I continued sending it after the child's death to the General, and I always presumed it was for him.

Q. (By Mr. THURMAN.) Was the child a child of General Belknap's?

A. Yes, sir.

Q. (By Mr. Manager McMAHON.) In that connection give the date of the death of the child, if you can remember it. I think we have agreed that the mother died about the 31st day of December, 1870.

A. And the child the following summer.

Mr. CARPENTER. Let it be also understood when he was married to the present Mrs. Belknap.

Mr. Manager McMAHON. In December, 1873, General Belknap was married to Mrs. Bower.

Mr. CARPENTER. Three years afterward.

Mr. HOWE. I should like to have the answer to this last question read.

The PRESIDENT *pro tempore*. The reporter will read the answer to the question propounded by the Senator from Wisconsin.

The answer was read, as follows:

A. I sent it to him originally according to what I have heretofore stated occurred on the night of the funeral. It may be presumed that it was sent for the child; but I continued sending it after the child's death to the General, and I always presumed it was for him.

Mr. HOWE. Now I should like to send to the desk one more question to be read.

The PRESIDENT *pro tempore*. The question of the Senator from Wisconsin will be read.

The Chief Clerk read as follows:

Q. Why did you say to Mrs. Bower that the child would have money after a time?

A. Because I had previously sent a remittance to the mother, and I felt like continuing it to the mother's representative, the child.

Q. (By Mr. CARPENTER.) The first remittance was sent to Mrs. Belknap.

A. Yes, sir; to Mrs. Belknap.

Mr. WRIGHT. I have a question I wish to propound, and I will read it in the first instance, as it is not very legible.

Q. You said on yesterday that you presumed that General Belknap knew from whom the money sent him was received. Now state what led you to so presume, or upon what you based this presumption?

Mr. CARPENTER. We object to this question. Let it be read again.

The PRESIDENT *pro tempore*. The question will be read by the Secretary.

The Chief Clerk read the interrogatory of Mr. WRIGHT.

The question being put, was decided in the affirmative.

The PRESIDENT *pro tempore*. The witness will answer the question.

The WITNESS. I said I presumed he knew where it came from.

Mr. CARPENTER. Now it appears there was a mistake, as I thought. The question does not correctly state the case to the witness. The question and answer yesterday were exactly this:

Q. Did General Belknap at this time know where the money was coming from that was being paid to him?

A. I should say that I presume he did.

The PRESIDENT *pro tempore*. The question will be answered. It will be read again to witness.

The Chief Clerk again read the question of Mr. WRIGHT, as follows:

Q. You said on yesterday that you presumed that General Belknap knew from whom the money sent him was received. Now what led you to so presume, or upon what you based this presumption?

Mr. Manager McMAHON. Before the question is answered, there is a misunderstanding as to what the real meaning of the answer given yesterday is. Our object in putting the question was to ascertain whether Belknap knew where the money was coming from, not the person, not the man from whom it came, but the place.

Mr. WRIGHT. This question covers the whole ground.

Mr. Manager McMAHON. Go on.

The WITNESS. I presumed that he knew, because he had appointed Mr. Evans to this post at my request. I had no other business transaction with General Belknap whatever except sending this money. I had sometimes forwarded him requests of Mr. Evans sent to me for certain privileges wanted around the fort. I cannot give details particularly. It is a kind of general knowledge arising from our relations together.

Mr. LOGAN. I desire to ask a question which I send to the Chair.

The PRESIDENT *pro tempore*. The question propounded by the Senator from Illinois will be read.

The Chief Clerk read as follows:

Q. From the conversation with the present Mrs. Belknap, mentioned by you in your answer to my former interrogatory, you spoke of an understanding with the former Mrs. Belknap, now deceased; please state what that understanding was.

Mr. CARPENTER. If the court please, we object to that. It does not seem necessary to argue the objection to a question which calls for an interview or an arrangement between this man and a third person.

Mr. Manager McMAHON. We second the objection.

The PRESIDENT *pro tempore*. Counsel objects to the question. The Chair will submit it to the Senate. Shall this interrogatory be admitted?

The question being put, there were on a division—ayes 12, noes 13, no quorum voting.

Mr. THURMAN. Let us have the yeas and nays.

The yeas and nays were ordered.

Mr. THURMAN. I understood the managers to object a little while ago to a similar question. Now what do the managers say to this?

Mr. CARPENTER. Both sides objected to this question.

Mr. THURMAN. I want to know, if both sides object to it, why it is asked.

Mr. CARPENTER. It is asked by a member of the court.

Mr. THURMAN. I want to know what business the court has to ask it.

Mr. LOGAN. If there is no objection, I should like to answer the remark of the Senator from Ohio.

The PRESIDENT *pro tempore*. The Chair hears no objection.

Mr. LOGAN. It seems to me a very strange remark for a Senator to make, to ask what business a member of the court has to put a question. I presume that members of the court here stand upon an equality, and that one has as good a right to ask a question as another, provided it is a proper question, couched in proper language. I asked a question a while ago of the witness what the understanding was between him and Mrs. Bower. I did not use the name, but that was it, and he gave the understanding, and in that answer he incidentally remarked that he had an understanding with the former Mrs. Belknap. The question was argued by the managers and counsel for the respondent; the vote was taken by yeas and nays, and the Senate voted that the question should be answered; and the witness did answer the question. In furtherance of that question, I have asked what the understanding was with the former Mrs. Belknap. Now, if the Senator desires to state his objection to that as a member of the court, let him do so, and if his objection is well founded, I certainly do not desire to ask an improper question; but at the same time I do not like a Senator in his manner and demeanor to indicate

that he is the only individual that has a right to ask a question in this court.

Mr. THURMAN. There is no necessity for the exhibition of that——

The PRESIDENT *pro tempore*. Is there objection to the Senator from Ohio proceeding? The Chair hears none.

Mr. THURMAN. There is no necessity for the exhibition of that feeling; and if the Senator from Illinois were not exceedingly sensitive, he never would have made such a remark. The House of Representatives here is represented by its managers; the defendant is represented by his counsel; and when both sides agree as to what are the issues upon which they will put in evidence, I really do not see, with entire respect to the Senator from Illinois and every other Senator, that it is any part of the duty of the Senate which is to sit here as impartial judges to introduce a new line either of prosecution or of defense. I see no reason for it; and if the Senate has erred once, it is no reason why it should err again. If neither the managers on the part of the House nor the counsel for the defendant have seen fit to go into the arrangements, if there were any, between the witness and this deceased lady or this living lady, it is no business of ours to go into them. If it is necessary for the purposes of public justice that they should be gone into and the testimony would be legitimate, it is to be presumed that the House of Representatives, through its managers, would have asked us to hear the testimony. If it were necessary for the defense that the matter should be gone into, it is to be presumed that the counsel for the defense would have introduced it as a defense. It is not for us to supply any deficiency of the prosecution or to supply any deficiency of the defense.

Mr. LOGAN. If there is no objection, I desire to say a word.

The PRESIDENT *pro tempore*. The Chair hears no objection to the Senator proceeding.

Mr. LOGAN. I am not so old in the practice of law as the Senator from Ohio, but I will ask him now as a lawyer if he ever knew a court that desired to ask a question to be prevented from doing it in the trial of any case whatever?

Mr. THURMAN. Until to-day, I never knew a court, in forty-odd years' experience, to ask a question to which both parties objected.

Mr. LOGAN. My experience has been more limited than that of the Senator, but in that limited experience I have observed that which he has not.

Mr. THURMAN. The Senator must bear in mind that a single Senator is not the court. It is not the court that asks the question, but one member of the court.

Mr. LOGAN. It is the court if the court agree to it. I never knew the whole body of the Senate to ask the same question at the same time; but if one member of the court asks a question and the rest agree to it, that is a question of the court. That was the proposition I was making. If the Senate do not agree to it, of course I shall withdraw the question, or at least the question will not be asked. But I am not managing this case, nor do I desire to manage it, and certainly the Senator from Ohio does not desire to do that; he has given evidence of that fact. But I am one of the court, and I have a right to have such information and light on this case as can be obtained properly. The managers have a right to manage their case to suit themselves, and so have the respondent's counsel; but some members of the court might have some idea in reference to this case, that some question might develop some fact that was weighing on their minds. Now I will state to the court that there is something in this case that neither side tries to develop; I do not know what it is; but that is perfectly patent to everybody. Whatever is in this case, no matter what it is, dark or bright, this court is entitled to know it in order to make up its verdict; and I, as one member of the court, claim the right to know the facts, and when counsel on either side do not put a question that strikes my mind as being one that I want to know something about, I claim the right to ask the question myself. The court can decide whether I am entitled to have the answer; I certainly have the right to ask the question.

Mr. MORTON. Mr. President——

The PRESIDENT *pro tempore*. Is there objection to the Senator from Indiana proceeding?

Mr. EDMUNDS. After the Senator from Indiana has concluded I shall object to further debate on all questions.

Mr. MORTON. I simply want to state that I regard it as the absolute right of this court or any member of it, with the consent of his brother judges or a majority of them, to ask any question; and the idea that the court can be overruled by the counsel on either side agreeing that the question shall not be asked is something entirely new.

The PRESIDENT *pro tempore*. The yeas and nays have been demanded on the question, Shall this interrogatory be admitted?

Mr. ANTHONY. I think if we take the question again by a division it will be found that there is a quorum here.

Mr. EDMUNDS. No; let us have the yeas and nays.

The yeas and nays were ordered.

The PRESIDENT *pro tempore*. The Secretary will report the question.

The Chief Clerk read Mr. LOGAN's interrogatory, as follows:

Q. From the conversation with the present Mrs. Belknap, mentioned by you in your answer to my former interrogatory, you spoke of an understanding with the former Mrs. Belknap, now deceased. Please state what that understanding was.

The PRESIDENT *pro tempore*. The roll-call will proceed.

The question being taken, resulted—yeas 23, nays 17; as follows:

YEAS—Messrs. Allison, Booth, Conkling, Conover, Cragin, Dawes, Ferry, Frelinghuysen, Hamilton, Harvey, Hitchcock, Howe, Logan, Maxey, Morrill, Morton, Oglesby, Paddock, Patterson, Robertson, Wadleigh, West, and Wright—23.

NAYS—Messrs. Caperton, Cockrell, Cooper, Davis, Edmunds, Gordon, Kelly, Key, McCreery, Merrimon, Mitchell, Norwood, Stevenson, Thurman, Wallace, Whyte, and Withers—17.

NOT VOTING—Messrs. Alcorn, Anthony, Barnum, Bayard, Bogy, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Clayton, Dennis, Dorsey, Eaton, Goldthwaite, Hamlin, Ingalls, Johnston, Jones of Florida, Jones of Nevada, Kernan, McDonald, McMillan, Randolph, Ransom, Sargent, Saulsbury, Sharon, Sherman, Spencer, and Windom—32.

So the question was decided in the affirmative.

The PRESIDENT *pro tempore*. The objection is overruled. The witness will answer the question.

The WITNESS. I think not.

Mr. CONKLING. What does the witness mean when he says he thinks not?

The WITNESS. I do not think I stated that I had an understanding with Mrs. Belknap.

Q. (By Mr. CARPENTER.) As I understand, the first money that you sent was sent to the former Mrs. Belknap, now deceased?

A. Yes, sir.

Q. And that was sent without any arrangement between you and anybody?

A. Yes, sir.

Q. A clean, clear present?

A. Yes, sir.

Mr. LOGAN. The witness spoke of a conversation about the child, that the money would now go to the child according to some former understanding.

The WITNESS. I said with General Belknap, not with Mrs. Belknap. I said that I was under the impression at one time that I had said something to General Belknap himself the night of the funeral; that I certainly had an understanding with him or with Mrs. Bower, because Mrs. Belknap was then dead.

Q. (By Mr. MCMAHON.) Had the present wife of General Belknap at any time any interest in the money that was sent to General Belknap by you?

A. Not to my knowledge.

Mr. WHYTE submitted the following question in writing:

Q. When you paid to General Belknap money in person did you have any conversation with him about the source whence the money came or in any way regarding it?

A. I did not.

Mr. MORTON. I propose the following question:

Q. How often after the first money was sent to Belknap and before your examination before the Committee of the House did you meet General Belknap, and was the money ever referred to in conversation at any of these interviews?

A. For the first two or three years, I saw him perhaps two or three times a year. The first money I sent General Belknap must have been in the spring of 1871. I suppose probably through that year and 1872 and 1873 I met him two or three times a year; but I have no recollection of the money having been referred to in any conversation between us.

Q. (By Mr. Manager MCMAHON.) Mr. Marsh, what is your best recollection as to having had a conversation with the Secretary of War on the occasion of the funeral of his second wife?

A. It is exceedingly indistinct.

Q. What is your best recollection as to whether you did or did not have a conversation with him personally while you were here attending the funeral of his second wife?

Mr. CARPENTER. That we object to.

Mr. CONKLING. What is the ground of objection?

Mr. CARPENTER. The ground of objection is that the witness says his recollection is so indistinct that he has no confidence in it himself.

Mr. Manager MCMAHON. That is a matter for the witness to settle. I prefer that the witness answer these questions and that we have the whole truth from the person who is under oath.

The PRESIDENT *pro tempore*. Shall this interrogatory be admitted?

The question was determined in the affirmative.

The PRESIDENT *pro tempore*. The witness will answer the question.

The question was read by the reporter, as follows:

Q. What is your best recollection as to whether you did or did not have a conversation with him personally, while you were here attending the funeral of his second wife?

A. I can only state that I have a very indistinct impression about it. I have sometimes thought that I said something to General Belknap on the night of the funeral, but I sometimes think I did not, and that the only conversation I had was with Mrs. Bower.

By Mr. CARPENTER:

Q. Is there any way in your mind to strike an average between those two impressions?

A. I cannot. I never shall know; I never shall be certain about it.

Q. The Senate will never know from you, then?

A. I have thought about it night and day, but the more I think about it the less I know.

By Mr. Manager McMAHON:

Q. At the time the change was made from the payment of $12,000 a year to $6,000 a year, about which you have testified, state what conversation passed between you and General Belknap.

Mr. CARPENTER. That we object to. Unless the court mean to say that the whole case may now be opened by the managers, that is an improper question. It is their direct proof, and they have gone over that.

The PRESIDENT *pro tempore*. Shall this question be admitted?

The question was determined in the negative.

The PRESIDENT *pro tempore*. The objection is sustained.

Q. (By Mr. Manager McMAHON.) Your wife has been subpœnaed as a witness to attend this tribunal?

A. Yes, sir.

Q. I desire you to state now whether she is able to attend.

Mr. CARPENTER. What is the object of that?

Mr. Manager McMAHON. We want to know from the witness whether she is able to attend.

Mr. CARPENTER. We object. What has that to do with this case whether she is well or sick?

Mr. Manager McMAHON. We have a right to send for her if she is able to come. Let the objection be passed upon by the Senate.

The PRESIDENT *pro tempore*. The counsel object to the question propounded by the managers. Shall the question be admitted?

The question was determined in the affirmative.

Q. (By Mr. Manager McMAHON.) State whether your wife is able to be present in court to be examined as a witness.

A. She is not; she is very ill.

Q. Have you the certificate of a surgeon to that effect?

A. I have.

Q. Whose certificate is it?

A. Dr. Alfred L. Loomis.

Mr. CARPENTER. Will the managers state now what the object of that testimony is?

Mr. Manager LAPHAM. It is to inform the Senate the reason why we do not call Mrs. Marsh.

Mr. CARPENTER. Is it proposed to raise any presumption against the defendant?

Mr. Manager LAPHAM. We shall argue that hereafter.

Mr. CARPENTER. We will take her testimony that was given before the committee if the managers want that, or consent to have her deposition taken. We want to completely repel the presumption that Mrs. Marsh being ill is any evidence of our guilt.

Mr. Manager McMAHON. The managers here decline to do that. I do not agree with them in that matter. The counsel will make his application to the Senate personally.

Mr. OGLESBY. Would it be in order to present a question to the witness?

The PRESIDENT *pro tempore*. It would be.

Mr. OGLESBY. May I read it?

The PRESIDENT *pro tempore*. You may.

Mr. OGLESBY. I call the attention of the witness to the question so that he may know whether my statements are correct or not. The Secretary will read it afterward. My question is this:

Q. You have stated during your examination to-day that the money advanced by you to Belknap was a present and that it afforded you pleasure to give it to him. In answer to a question put to you after that, you stated that you had some conversation with Mrs. Bower on the night of the funeral about the payment of money in the future, and that after that conversation you paid money directly to Belknap. Do you now mean to have the court understand that the payments or presents of money from you to Belknap after that time were only in consequence of that conversation or from the motive previously stated that it afforded you pleasure to do so?

A. The money that I sent during the life of the child may be fairly considered to be sent to Mr. Belknap for Mrs. Bower to keep for the child. After its death I understood it was for him.

Mr. WHYTE. The witness says that he understood the money sent after the death of the child to General Belknap was for General Belknap. I want to ask him from whom did he understand that it was for General Belknap?

The PRESIDENT *pro tempore*. The Secretary will report the question.

The Chief Clerk read the question of Mr. WHYTE, as follows:

Q. From whom did you understand that it was for General Belknap after the death of the child?

Mr. CARPENTER. If the court please, we object to that because it would be hearsay evidence. I understand the answer which the witness has already given is his mere mental conclusion.

The WITNESS. That is all.

Q. (By Mr. CARPENTER.) That is what you say?

A. That is all; not any understanding. Perhaps I am unfortunate in my choice of words. It is my own conclusion; that is all.

Q. Not the result of any understanding with Mr. Belknap or anybody else?

A. No, sir.

HENRY S. BRINKERHOFF sworn and examined.

By Mr. Manager McMAHON:

Question. State where you are employed and how long you have been there.

Answer. In the office of the Adjutant-General of the Army; for about ten years.

Q. [Presenting a paper.] Look at this paper, or rather the marks on it. See whose marks those are on the outside, and read the marks in your handwriting, if any are there, and give us also the marks that may be in the handwriting of the Secretary of War at that time, if any are there.

Mr. CARPENTER. Is that the letter of Marsh?

Mr. Manager McMAHON. It is the letter of August 16, 1870, from Marsh to the Secretary of War applying for the post-tradership at Fort Sill.

The WITNESS. The only writing upon the outside of this letter that is in my handwriting is a note saying "Received back Adjutant-General's Office, March 15, 1876."

Q. (By Mr. Manager McMAHON.) What marks are on it in the handwriting of the Secretary of War?

A. "Received August 16, 1870." I should say that it is my impression this is in the handwriting of General Belknap. He was then Secretary of War.

Q. Is that in pencil or in ink?

A. It is in ink—what I have just read.

Q. See whether there are other marks on it in pencil in the handwriting of the Secretary of War.

A. There is a mark in pencil that says, "Answered August 16. File; official." It is my impression that it is in the handwriting of the Secretary of War.

Q. How familiar are you with the handwriting of the Secretary of War?

A. Quite familiar. I have seen a great deal of it.

Mr. CARPENTER. There is no question that that is in his handwriting. You need not spend any time about it?

Q. (By Mr. Manager McMAHON.) One of the managers desires the question to be put whether there are any marks upon it indicating that it was originally filed in the Adjutant-General's Office?

A. The marks indicate that it was received in the Adjutant-General's Office for file September 23, 1870.

Q. (By Mr. CARPENTER.) About a month after its date?

A. About a month after its date.

Q. (By Mr. Manager McMAHON.) In whose handwriting is that?

A. It is in the handwriting of the clerk who was then and is now in charge of the book of record.

Cross-examined by Mr. CARPENTER:

Q. [Presenting a paper.] Whom is that letter addressed to?

A. It is addressed to General W. W. Belknap.

Q. Would not that letter in due course of business go to Belknap's table before it would go to the Adjutant-General's Office?

Mr. Manager McMAHON. We do not dispute that.

Mr. CARPENTER. I want to prove it.

The WITNESS. A letter addressed in that way, in my opinion, would go first to the Secretary of War.

Q. (By Mr. CARPENTER.) And be sent by him to the Adjutant-General's Office?

A. That is my opinion.

Q. And that got into the Adjutant-General's Office within a month after its date?

A. Within a month after its date.

WILLIAM B. HAZEN recalled.

Mr. Manager McMAHON. General, I have been given to understand by you that you desire to make an explanation. I do not know what it is, but I recall you to give you the chance.

Mr. CARPENTER. Is it anything about this case; is it testimony or what?

Mr. Manager McMAHON. It is about this case.

The WITNESS. It is in regard to the testimony of yesterday. Upon consideration I find that the letter which I referred to, the official letter which I said was reported to the War Department for General Belknap's information with regard to post-traders, was written at Fort Buford, and not at Fort Hays; and that would make it after I had testified to the House committee, and not before it. So that I wish to change my testimony in that respect. It was written after, and not before, as I supposed yesterday.

By Mr. CARPENTER:

Q. Is that the letter which you read here yesterday?

A. No; there was another one before that which I referred to. That is not the one I referred to. There is another letter on the subject.

Q. Did you ever write to Secretary Belknap more than one letter in your life on that subject?

A. Not to him directly; but one to him. That was the one.

Q. Which one did you send to him directly?

A. The one which was read yesterday I sent him directly, but that was not the one I referred to in my testimony yesterday. The one I referred to in my testimony yesterday was a letter written to the Adjutant-General of the Army.

Q. Did you say in the testimony which you gave before the committee that you had written a letter to Secretary Belknap on that subject?

A. I did.

Q. You now find that you had not?

A. It was intended——

Q. Answer the question. You now find out that at the time you testified before the committee you had not written to General Belknap?

A. I did not intend——

Q. I do not ask you what you intended. Here is a distinct question, which can be answered "yes" or "no." I ask you, do you now find out that at the time you gave your testimony before the committee you had not written to General Belknap?

A. Not personally.

Q. You swore you had, did you not?

A. I thought I had.

Q. Did you not swear that you had, without any thinking about it? [Presenting printed slip.] I will ask you if you wrote a letter of which that is a copy? You seem to be considerable of a correspondent.

A. [Examining paper.] I did write it.

Q. Will you read it?

The witness proceeded to read as follows:

CITY OF MEXICO, *March* 15.

HON. HIESTER CLYMER.

DEAR SIR:—

Mr. THURMAN. What year?

The WITNESS. March 15, 1876.

Mr. CARPENTER. Hand it to the Secretary to read. It is in print.

Mr. Manager McMAHON. Let me see it one moment before it is read, Mr. Secretary.

Mr. Manager LAPHAM. I do not see what that has to do with this case.

Mr. CARPENTER. You will see after you hear it.

Q. (By Mr. THURMAN.) Did you write a letter to the Adjutant-General on the subject of post-traderships before you testified to the House committee?

A. My impression is that I did. I wrote letters on that subject. I am under the impression I wrote to the Adjutant-General of the Army.

Q. Before you testified then?

A. I think so; I am not prepared to say.

Q. (By Mr. CARPENTER.) Did you not state in your testimony before the committee that you had written to the Secretary of War on the subject?

A. I did; but I was not certain whether it was before or after.

Mr. Manager McMAHON. I have no objection to this letter being read.

The PRESIDENT *pro tempore*. The Secretary will read it.

The Chief Clerk read as follows:

WASHINGTON, *March* 29.

The following letter was received recently by the chairman of the Committee on Expenditures in the War Department:

HON. HIESTER CLYMER:

CITY OF MEXICO, *March* 15.

DEAR SIR: The papers of the 4th instant brought me the result of the Belknap investigation. By referring to the proceedings of the House Military Committee of March, 1872, you will find precisely the same information given by me then as that upon which your investigation was founded. Mr. Smalley, the then clerk of that committee, published in the New York Tribune the purport of my evidence, which only referred to the black-mailing of the post-traders and not to the final disposition of the money; but he added to it the presumptive disposition, which is now proved to have been true. The Secretary of War took the newspaper paragraph to the President, as he has since said, remarking: "Mr. President, have you seen the article in the New York Tribune of this morning referring to me?" To which the President replied: "I have, and do not belive a word of it." The Secretary then said: "If you do believe it, I am no longer fit to hold a place in your Cabinet." This was the end of the matter both with the President and Congress, leaving it a question of veracity between the Secretary and myself.

I have waited patiently four years, never doubting I shall be finally vindicated, though at times feeling very heavily the weight of displeasure of those high in power for daring to tell the truth respecting the great outrage upon the Army. My object from the first was not only to relieve the Army from this outrage, but to obtain the execution of a most excellent law passed in 1866, requiring the Commissary Department to furnish to enlisted men at cost the articles usually furnished them by settlers. This most admirable arrangement, which is virtually carried out in all other armies, would be worth to the enlisted men $2,000,000 annually, and cost nothing but a little extra work to the Commissary Department. This department has opposed this law from the first. In setting this law aside vitality and value were given to the post-traderships which could be done in no other way. The law itself has even been omitted from the Revised Statutes. To secure this most useful end was my only purpose. In the autumn of 1875 the Secretary visited my post, receiving my most cordial hospitality, which was fully accepted. I thought this a proper occasion for a renewal of our old and friendly relations, as we had served together in the war. I therefore wrote him a sincere letter looking to such a result, though I felt entitled to some reparation, having for four years experienced a full sense of the wrong inflicted upon me by the Secretary in his virtual denial to the President of my truthful report. The Secretary did not see fit to reply to my letter. I then concluded to let the matter rest, hoping only for the partial reparation that time gives all wrongs, when your letter in January, as chairman of one of the committees of Congress, called for the information furnished you. For your compliance with my request not to bring my name forward in connection with the investigation, I tender you my thanks, and now release you from further obligations in that respect.

Very respectfully, &c.,

W. B. HAZEN.

Q. (By Mr. CARPENTER.) You have felt a little interest about this impeachment, have you not, all along?

A. Some interest in it.

Q. You took some interest in it because you thought you were going to get vindicated, did you not?

A. I do not know that that was the reason. I took the ordinary interest which I do in matters of this kind.

Q. Did you not take a little more interest in this impeachment than you ever took in anybody else's impeachment?

A. I never had anything to do with anybody else's impeachment.

Q. Or any other lawsuit? Have you not been pretty active now in the press and in all ways setting this thing going?

A. Somewhat so.

Q. Is that any portion of the duty of the colonel of a regiment?

A. No more his duty than that of any citizen.

Q. Is not the colonel of a regiment bound by regulations, if he knows anything against any officer, to furnish it in some official way and form, and not scandalize him in a newspaper?

Mr. Manager McMAHON. Was he Secretary of War after the letter was written? I think that is a little late.

Mr. CARPENTER. It was still later when he ought to have made his report.

Mr. Manager McMAHON. I am speaking about this letter. I think you called him Secretary of War.

Mr. CARPENTER. You call him "the late Secretary of War." That will do. (To the witness.) How many other articles have you written on the subject?

A. I do not know. I do not remember writing any.

Q. You do not remember writing any for publication?

A. I do not remember writing any.

Q. Who wrote that article published in the New York Tribune?

A. At what time?

Q. The article that was read here in this trial. There has been but one article.

Mr. Manager HOAR. February 15, 1872.

Q. (By Mr. CARPENTER.) About the tradership at Fort Sill?

A. I did not write it.

Q. Do you know who did?

A. I suppose Mr. Smalley did.

Q. Did you furnish him the information upon which he wrote the letter?

A. I furnished the information out of which the letter was written.

Q. You speak here of having sustained some grievous wrongs at the hands of the Secretary. You swore yesterday that he never had done an act of injustice to you that you were aware of. Now, what did you mean when you wrote this letter?

A. I was under the impression that he had from time to time been inimical to me and that I had suffered thereby.

Q. You swore yesterday that he never did an act of injustice to you and had done some favors, or tried to do some. What did you mean when you wrote in this letter of the grievous wrong done to you by the Secretary of War? Did you mean anything, or was it just the common impulse to jump on after a man is down? Is that it?

A. Not at all.

Q. Then state what the motive was.

A. I believed that he had made me unpopular with my officers.

Q. Is it true that you are unpopular in the Army?

A. I do not know that it is.

Q. Then how did you think he made you so? What made you think that he had made you unpopular, or apparently unpopular, with the officers?

Mr. Manager McMAHON. I think that would be very easily answered if the Secretary of War was inimical to him.

The PRESIDENT *pro tempore*. The counsel have the witness.

Q. (By Mr. CARPENTER.) Let us know about that.

A. I supposed in a general way that he was unfriendly to me.

Q. What made you suppose so?

A. His manner to me.

Q. What was his manner to you? Did he ever treat you otherwise than as a gentleman? If so, when and where?

A. I cannot specify times.

Q. Can you state the fact that he ever did?

A. I was under that impression.

Q. You know how to treat a gentleman and you know when you are treated like a gentleman, do you not? Now, I ask you if he ever treated you in any other way; and, if so, when was it and where was it?

A. I am unable to give times and places.

Q. Are you able to say that he ever treated you in an ungentlemanly manner?

A. I believed so at that time.

Q. You believed so. You knew whether he had or not, or has your standard of gentlemanly demeanor changed since that time? How is that?

A. I do not feel like answering.

Q. I did not think you would, and I will excuse you. How do you know what General Belknap said to the President on this subject? Did you hear it?

A. I heard it from several people.

Q. Did you hear the conversation?

A. No, I did not hear the conversation.

Q. Then on mere hearsay you, being an officer of the Army, sat down and wrote a letter over your own signature relating a conversation held with the Commander-in-Chief of the Army? That is what you did, was it not?

A. I only knew that conversation from others?
Q. Then you did not know it at all?
A. I did not know it from hearing it directly.
Q. Is it according to discipline in the Army for an officer to publish scandal of the President which he knows nothing about except from hearsay?

Mr. Manager McMAHON. I must at this point enter an objection. It seems that my friend here is pursuing the old line, having the old misapprehension that every now and then crops out in this case. The misapprehension is that he is trying General Hazen and not General Belknap. I think I may make the remark that the conduct of the counsel of General Belknap in this particular case to General Hazen indicates very clearly that the apologetic letter that was written by General Hazen to General Belknap failed to reach the right spot in that gentleman's composition.

Mr. CARPENTER. I understood the manager only wanted to make a little speech on the merits. Did he object to the question?

Mr. Manager McMAHON. I objected to the question.

Mr. CARPENTER. Mr. President, this witness has been laboring for months to get up this impeachment for his own vindication. He comes back here to-day for explanation, and I am doing everything in my power to assist his purpose. I want to show what his motives have been; I want to show that they are utterly groundless; I want to show that he has violated all the proprieties and all the duties of his official station by the hand he has taken in this matter and his anxiety to fan public sentiment against General Belknap, who has never done him an injury in his life-time, and who had shown him so many favors that General Sherman objected to his giving him another; and that is the man who repeats gossip against the President and against the then Secretary of War, and publishes it in letters over his own name! When we see the name of an Army officer published in print we think we have struck truth. The line of honor in the Army is drawn more distinctly and is more rigidly enforced than perhaps in almost any class of any community; the letter of an Army officer carries conviction with it; and I want to show here, and show fully, that all that has been done by him has been not in the line of his duty, but in violation of it, against the President of the United States, Commander-in-Chief of the Army, and that his charges are wholly untrue; that General Belknap never did him an injury; that he has conferred upon him so many favors that General Sherman would not let him confer another.

Mr. Manager McMAHON. Mr. President, I am right in the surmise that I made in the opening, that the counsel had imbibed the sentiment and the feeling of the client in this case in regard to, I will say, the distinguished witness who is upon the stand. Now, Senators, let us rehearse the facts in this case up to a certain point, and then remember and call to mind the tirade made against this witness by the gentleman.

Mr. CARPENTER. I rise to a point of order.

Mr. Manager McMAHON. I do not submit to a point of order.

Mr. CARPENTER. You have got to; you cannot help that. I make the point of order on the counsel that in arguing a question on the admissibility of testimony he cannot sum up the case.

Mr. Manager McMAHON. I do not propose to do that. I propose to sum up in regard to this particular witness all the facts you have now been alluding to.

Mr. CARPENTER. The point is you cannot do it.

Mr. Manager McMAHON. You cannot make a speech and shut me off, when by law I have the close. You cannot do it.

The PRESIDENT *pro tempore*. The manager will confine himself to the question.

Mr. Manager McMAHON. The gentleman makes a speech to this court to prejudice this witness in the mind of this court, and upon what? That he has been making false statements. Was it not true that in 1872 Caleb P. Marsh was milking John S. Evans, and was it not true that he was milking him to give one-half of the proceeds to the Secretary of War? He only stated the half of the truth; he only stated that Marsh was getting the money from Evans. He did not state the other part of it.

Mr. CARPENTER. You will spoil your final speech entirely.

Mr. Manager McMAHON. I have no final speech.

The PRESIDENT *pro tempore*. The manager has the floor. Colloquies will not be permitted.

Mr. Manager McMAHON. I will say that I have no objection to the interruptions.

Mr. CARPENTER. It is all friendly between us.

Mr. Manager McMAHON. Of course we so understand. When this officer was summoned as a witness before the Military Committee in 1872, what did he testify to? Did he say one word reflecting upon the Secretary of War? Not one word. The article in the New York Tribune, about which so much fuss was made, expressly says that of course the Secretary of War knows nothing about these things, and it was expected that when information was brought to his ears that these grievances existed he, like an upright and honorable man, would have corrected them. What then? He has never implicated the Secretary of War; he has never made the slightest allusion to him; but we find—and now I am compelled, I may say to the gentleman, to go back to a point that we had conceded in this case—that the heavy hand of the superior officer does lie over the head of this young man in the service of his country; we find that while he does not give us any distinct instance except as he did in his examination in chief, his command is ordered here and there, and he not sent with it; we find that he is under the conviction for three long years that he is oppressed by the Secretary of War. Then they have a personal interview, in which they come to a mutual explanation. He writes a humble apology, such an apology as nobody but an inferior under the strict military rules would write to a superior officer.

Mr. CARPENTER. That is rougher on him than anything I have said.

Mr. Manager McMAHON. You never fully appreciate the roughness of what you do say, sir.

Mr. CARPENTER. That may be.

Mr. Manager McMAHON. Now when in the lapse of years this matter is brought up General Hazen is called here as a witness, and what does he testify to, what important fact? He does not testify to any personal knowledge of the payment of money by Evans to Marsh; he does not implicate the Secretary of War; he simply testifies here, (and that is the sum and substance of his testimony so far as it is given,) that General Belknap never called to see him about it. That is the sum and substance of General Hazen's testimony in this case; and the honorable Senate will bear me witness that it is all we put him on the stand for, all that we argued to get in that the Secretary of War knew that General Hazen was responsible for this statement, and never came to him to inquire where he got his information in order that, like a true officer, he might correct it. And because he has dared upon my subpœna to come into this court and to say that General Belknap never spoke to him about it, therefore the old venom, as it were, sticks out in regard to this matter, and he must be treated by the counsel in this case in a manner that cannot be justified except that it be the reflex of the sentiment of the defendant in regard to him, and in that light we accept it.

Now I say in the interest of the speedy trial of this case, although I may be taking a few more minutes in the argument, that I call back the attention of this court to the question that is at issue in the case. I object to this line of examination, and I do not see how any good lawyer can say that the objection is not well founded.

The PRESIDENT *pro tempore*. Objection is made by the managers to further questions by the counsel of the witness.

Mr. CARPENTER. The objection is not to all questions, but to this particular question. Let it be read.

The reporter read the question, as follows:

Q. Is it according to discipline in the Army for an officer to publish scandal of the President which he knows nothing about except from hearsay?

The PRESIDENT *pro tempore*. Shall this interrogatory be admitted?
The question was decided in the negative.

Q. (By Mr. CARPENTER.) You say in that letter that the law to which you referred as being such an excellent one was left out of the Revised Statutes. Turn to page 207 and see about the law that you referred to.
A. I will say that the law I referred to I was mistaken about.
Q. It is in the Revised Statutes?
A. It is in the Revised Statutes, although I looked for it very carefully at that time and could not find it.
Mr. CARPENTER. That is all.
Mr. Manager McMAHON. No more questions of this witness.

Hon. HIESTER CLYMER sworn and examined.

By Mr. Manager McMAHON:

Question. You are a member of Congress?
Answer. I am.
Q. Chairman of the Committee on Expenditures in the War Department?
A. I am.
Q. That committee had charge of an investigation into the Fort Sill business?
A. Yes, sir.
Q. State whether Mr. Marsh was subpœnaed before your committee and gave testimony there.
A. He was supœnaed and gave testimony before the committee.
Q. Has the testimony as he gave it before the committee been published by order of the House?
Mr. CARPENTER. That we object to.
Q. (By Mr. Manager McMAHON.) Look at this, and see if it is the original testimony taken in the case. [Handing a manuscript to the witness.]
A. I presume it to be; it is in my own handwriting.
Q. Is it all there?
A. I can only answer that question accurately by reading it all; but if this was obtained from the Clerk of the House——
Mr. Manager McMAHON. It was; he produced it here.
A. Then I should say with that reservation that I believe it to be the testimony taken.
Q. Does it appear to be signed by Caleb P. Marsh?
A. I know that the evidence was signed in my presence. I find his signature here.
Q. Have you got the sheets in order there?
A. Yes, sir.
Q. After the testimony of Mr. Marsh was taken, state what action

your committee took in regard to it so far as the Secretary of War was concerned.

Mr. CARPENTER. I object to that. Let us know what the object of that is.

Mr. Manager McMAHON. I will state briefly what we propose to show. We propose to put in evidence the fact that the witness Marsh was examined; that his testimony was reduced to writing; that the Secretary of War was officially notified of the fact; that he appeared; that the testimony was read over to him; that he took time to consult; that he finally came in and presented his resignation to the committee, from which we shall draw our inferences as far as the situation permits. That is all.

Mr. CARPENTER. I want to make a little suggestion to the managers at this point. I had supposed that the order made by the court precluded all the subjects set forth in our pleadings prior to the three-weeks consultation of the court; but if that is to be opened, if that is a question that can be gone into here, we propose to play several tunes to that key.

Mr. Manager McMAHON. I think the counsel misunderstands the purpose, and before he sits down I should like to state to him, as he has the right to reply, that the purpose is not anything but this: Here is a party confronted with an accusation. How does he meet it? Does he deny it? Does he ask to cross-examine the witness? Does he dispute the truth of the statements, or does he admit it, or does he resign? The strength of the conclusion that may be drawn from the conduct depends upon the importance of the conduct that may have taken place. In this case we all know as a matter of fact that he resigned. From that we propose to draw such conclusion as in our judgment the law will warrant us to draw.

As my colleague, Judge HOAR, suggests to me, it is substantially proof that the defendant has fled from justice—I do not mean fled from impeachment, but fled from his office, fled from position, gone out of his place—which is always substantially admitting the truth of the statements therein contained.

Mr. CARPENTER. In other words, that he has risen to the dignity of a private citizen, clearing himself from the annoyance that visits every man in public life; and that is evidence against the defendant, is it? The proposition here of course includes the reading of all that evidence.

Mr. Manager McMAHON. It does.

Mr. CARPENTER. What purpose may you read that evidence for? The proposition substantially is that they shall read all the evidence that was given by Marsh before the House committee and which they say was read to General Belknap. That testimony could be competent for nothing except to impeach Mr. Marsh, and they cannot impeach him because he is their own witness.

Now the question is whether that testimony shall be read over for the mere purpose of proving after the testimony has been read what our plea declares, what is admitted through the whole record in the articles of impeachment and in the entire defense, that he resigned on a certain day. If the managers propose to go into that subject apart from the testimony of Mr. Marsh, which we shall object to for other reasons, if they propose to open the issues which they made on our plea in abatement, we shall of course follow it up with proof and shall offer to prove that that committee made the distinct proposition to Mr. Belknap that if he resigned before twelve o'clock of the next day there would be no impeachment, and that he brought the original resignation and the acceptance of the President upon it and delivered it to the committee and the committee drew their report in substance saying that he having resigned they had no further duty in the premises, and that afterward, after some political consultations, the committee changed their mind and did make a report that has been printed.

Mr. EDMUNDS. May I ask the counsel a question, Mr. President? Do I understand you to admit that the Secretary of War resigned in consequence of this accusation made against him?

Mr. CARPENTER. If I ever get around to the point where I want to admit that, I will make the admission so distinct that the Senator from Vermont will have no doubt about what I say. I have said nothing upon that subject.

Mr. EDMUNDS. I think I am entitled to a respectful answer from counsel, either to say that he does or does not or to say nothing, and not make a retort of that character. I ask the counsel respectfully if I understand him to admit that? He can tell whether he does or not without making any very sharp rejoinder to me.

Mr. CARPENTER. I have not said anything about it, as I understand. I have not intended to do so.

Mr. EDMUNDS. Very good.

Mr. CARPENTER. But I do intend to prove, if this proof is admitted, what took place between the committee and the Secretary of War. That is all.

Mr. Manager McMAHON. We will not leap before we come to the stile on that point.

The PRESIDENT *pro tempore*. The question will be repeated and the Chair will submit it.

Mr. CONKLING. If there is a question pending, I ask to hear it read.

Mr. WRIGHT. May I be allowed to make an inquiry? Do I understand that the managers propose to introduce this testimony and follow it by the single proposition that thereupon the Secretary of War resigned, and thereby ask the Senate to draw a conclusion, or that there was anything said by him or done by him other than the mere resignation?

Mr. Manager McMAHON. I have already stated that we expect to show that the investigation was continued from one hour in the day until another and then continued until the next day, and that while they were waiting for the matter the resignation was brought in and handed to the committee; and I accept the statement of the distinguished counsel, if he desires it in, for the express purpose of preventing his being impeached. If he desires to prove that fact, I have not any objection certainly.

Mr. CONKLING. If I am not out of order I want to ask a question. Shall I understand the managers to propose either to read at large the testimony of Marsh or to have that testimony received here and go upon the record, all for the purpose of proving that after it was delivered the respondent resigned his office? Is that the scope of this proposal, or is it intended to put into the case what Marsh testified in another form on another occasion, that that testimeny may speak in this trial?

Mr. Manager McMAHON. Mr. President, I will answer the honorable Senator. It is offered in part only for the purpose which the honorable Senator from New York has eliminated from my remarks. The entire purpose is to show that substantially the same testimony as has been given here, not a different statement, but substantially the same statement as has been made here, was read over to the Secretary of War as a charge by one of the co-ordinate branches of the Government, to which he made no statement under oath or otherwise, and that the substantial facts therein stated having been brought to his knowledge and read without dispute, we are entitled to draw two inferences, the one from his resignation, and the other from his failure to deny the facts therein stated, whatever they may have been.

Mr. BLACK. That is, you want to use it as a confession.

Mr. Manager McMAHON. If you put it in that severe light, probably yes.

Mr. BLAIR. Mr. President and Senators, I ask the attention of the Senate to the scope of the question which is now to be acted upon, and I put it to this body to say whether any legitimate conclusion such as the counsel for the Government seeks to draw from the conduct which he seeks to prove here would be authorized by the proof. The whole object of the gentleman is to show that in consequence of similar proof being offered before the Committee on War Expenditures and being made known to the defendant in this case he thereupon resigned his commission as Secretary of War, and he admits that at the time this resignation was put in it was done in consequence of an understanding which then was had that thereby impeachment or an action of this kind which is now here pending would be avoided.

Mr. Manager McMAHON. You misunderstand me. I say if you can prove that, I have no objection.

Mr. BLAIR. Well, I understand that that is the proof which is to be offered, and is the nature of the case to which the managers now invite this court. Now, I ask the court to consider the state of proof to which the managers invite your attention, and to say whether or not any such conclusion as they seek to have you draw from it could be legitimately drawn. They ask you to draw a conclusion from the fact that the Secretary of War on seeing the proof resigned his office. I ask this court if that is a confession of guilt, or whether anybody in his senses could draw such a conclusion from it, even if it were not accompanied with the facts which we intend to prove if the matter is gone into. We intend to show that the reason of the resignation was that we wanted to avoid this trial, and had reason to believe that the committee before whom this testimony was taken concurred with us in the belief that that would be an avoidance of this trial. Now take the whole scope of the case, because here is voluminous testimony to be offered and to be considered, and I ask the Senate to consider now before we go into it whether or not any such conclusion as the managers seek to draw from that can be legitimately drawn.

The PRESIDENT *pro tempore*. Shall this testimony be taken?

The question was decided in the affirmative.

The PRESIDENT *pro tempore*. The witness will answer the question.

The question was read by the reporter, as follows:

Q. After the testimony of Mr. Marsh was taken, state what action your committee took in regard to it, so far as the Secretary of War was concerned.

A. The evidence of Mr. Marsh was taken by the committee on Tuesday, the 29th day of February. On the morning of Wednesday, the 1st of March, I, as chairman of the committee, addressed a note to the Secretary of War, informing him in brief terms that evidence relating to himself had been given before the committee the day before, and informing him that there would be a meeting of the committee at, I think, half past ten o'clock in the morning, to attend which I invited him.

Q. (By Mr. Manager McMAHON.) State, now, whether you received any personal or other answer to that letter.

A. At half past ten in the morning the committee met, and I think all the members were present, and at that hour, or shortly afterward, the Secretary of War appeared. My impression is, although I am not very accurate, that he said he appeared in obedience to the invitation in my note. He came there at that time. I do not recollect that he stated that distinctly.

Q. State whether the testimony of Mr. Marsh was read over to him.

A. I read it to him at that time.

Q. Did you read it to him from the manuscript that you have now before you?

A. I did.

Q. Have you all the testimony of Marsh that was taken before your committee and read to the Secretary before you now?

A. All of it, I believe.

Q. What was said by the Secretary of War after you read it to him?

A. The Secretary, if I remember correctly, said, "Some of the statement I know to be true; other portions of it I know to be false; and some of it I know nothing about." That is my recollection of his reply.

Q. What action was then taken in regard to the matter by him?

A. If you will allow me to refer to the minutes of my committee to refresh my memory, I will answer.

Q. Have you the book?

A. I have the book.

Mr. BLAIR. There is no objection on our part.

The WITNESS. [Consulting a paper.] The Secretary of War expressed a desire to cross-examine the witness, and asked time to employ counsel, and thereupon the committee adjourned until three o'clock of that day for that purpose.

Q. (By Mr. Manager McMAHON.) That was the 1st day of March?

A. The 1st day of March.

Q. Did he appear at three o'clock?

A. At three in the afternoon the committee again met, and all the members were present.

Q. State whether Mr. Marsh was present at each meeting that day.

A. Mr. Marsh was present certainly at the morning meeting, and my impression is at the afternoon meeting, although I am not so clear in my recollection about that, but certainly at the morning meeting.

Q. State what took place at the afternoon meeting.

A. I recollect that for the information of Judge Blair all the testimony and exhibits in the case were again read; my recollection being that the Secretary of War at that time retired.

Q. You refer to Hon. Montgomery Blair?

A. Yes, sir; Montgomery Blair, counsel in this case.

Q. Was any further action taken by the committee that afternoon?

A. There was none.

Q. When did General Belknap again appear before that committee, if at all?

A. He did not again appear in person.

Q. Was it adjourned at his request until any particular time?

A. The committee on that afternoon adjourned to meet that evening at the residence of one of the members of the committee.

Q. Was General Belknap present at that meeting?

A. He was not.

Q. Was his counsel there that evening?

A. He was not.

Q. State when the committee met again.

A. You mean the subsequent day?

Q. Yes, sir; the next day.

A. On Thursday, the 2d of March, the committee met at half past ten o'clock in the morning pursuant to the adjournment of the night before.

Q. Did General Belknap appear at that time?

A. He did not.

Q. Was his counsel there the next morning?

A. At about eleven o'clock Judge Blair appeared before the committee.

Q. In what capacity did he appear there?

A. I can hardly say definitely whether as friend or counsel, from what had transpired before that.

Q. What took place when Judge Blair arrived?

A. He presented a letter signed by the President of the United States accepting the resignation of W. W. Belknap as Secretary of War.

Q. Have you the original letter here?

A. I presume it is among the exhibits here.

Q. I think it is in the envelope. [Directing the witness's attention to an envelope.]

A. [After examining.] I hold the letter of acceptance in my hand.

Q. The original letter?

A. Yes, sir; the original letter signed by the President of the United States.

Q. Just read that.

A. "Executive Mansion, Washington, March 2."

Mr. CARPENTER. Read the resignation and also the acceptance.

A. The resignation is:

WASHINGTON, D. C., *March* 2, 1876.

MR. PRESIDENT: I hereby tender my resignation as Secretary of War, and request its immediate acceptance.

Thanking you for your constant and continued kindness, I am, respectfully and truly, yours,

WM. W. BELKNAP.

This is certified to be a true copy as sent to the committee.

The letter of acceptance is as follows:

EXECUTIVE MANSION, WASHINGTON, *March* 2.

DEAR SIR: Your tender of resignation as Secretary of War, with the request to have it accepted immediately, is received, and the same is hereby accepted with great regret.

Yours, &c.,

U. S. GRANT.

Q. (By Mr. Manager McMAHON.) At what time had you information from the President in a sort of official letter that this resignation was presented to the President and accepted?

A. We took an adjournment for an hour or more, and at about half past twelve o'clock the committee met and the chairman was directed to address a note to the President asking——

Q. Before you go to that state whether any questions were put to Mr. Marsh by the counsel or friend of General Belknap at that meeting at 10.30.

A. My recollection is that Mr. Marsh was recalled and that one question possibly, not more I think, was put to him by Judge Blair at that time.

Q. Now go on to the matter you were stating.

A. We took a recess until half past twelve o'clock, when the committee directed the chairman to address a note to the President asking him at what hour he had received the resignation of the Secretary of War. We received a reply to that note which is among the exhibits here.

Mr. CARPENTER. We will permit that letter to be read as evidence of the fact.

The WITNESS. I have a copy of the note I addressed as chairman to the President.

Mr. Manager McMAHON. The answer is what we want.

Mr. CARPENTER. It is agreed that it shall be admitted as evidence of the fact to save our calling witnesses.

Mr. Manager McMAHON. Yes, sir.

The WITNESS. The reply of the President is as follows:

EXECUTIVE MANSION,
Washington, March 2, 1876.

SIR: In reply to your note of inquiry of to-day's date the President directs me to say that the hour of the acceptance of the resignation of Hon. W. W. Belknap as Secretary of War was about ten o'clock and twenty minutes this morning. A copy of the letter of resignation is herewith inclosed.

I am, sir, your obedient servant,

C. C. SNIFFEN, *Secretary.*

Hon. HIESTER CLYMER,
Chairman Committee on Expenditures in the War Department,
House of Representatives, present.

Mr. CARPENTER. That letter may be received as evidence of the fact.

Mr. Manager McMAHON. Certainly; we make no objection. (To the witness.) State now whether at any subsequent time the Secretary of War or his counsel asked to have any of the witnesses recalled to have any cross-examination or any explanation made.

A. My recollection is that we took a further recess during that afternoon of Thursday, the 2d of March, for the purpose of considering the request of General Belknap made by his counsel, Judge Blair, to be permitted to appear before the committee to make a sworn statement by himself, and that we determined that if he desired to do so he should be heard.

Q. (By Mr. Manager McMAHON.) You took that recess?

A. For the purpose of giving General Belknap an opportunity of appearing.

Q. Did you meet again at the hour indicated to Mr. Blair that you would meet again?

A. We did.

Q. Did you meet at the time and place?

A. We did, in the committee-room.

Q. Did any one appear there on behalf of General Belknap?

A. No one appeared. We did receive a telegraphic communication from Judge Blair.

Q. To what effect?

Mr. CARPENTER. Is all that evidence?

Mr. Manager McMAHON. We only want to show that we did not close down without his being informed.

Mr. CARPENTER. Suppose they had; what difference does it make?

Mr. Manager McMAHON. They did not close down until the other side had a fair chance to come in.

Mr. CARPENTER. I object to the testimony.

Mr. Manager McMAHON. I will state the object of this, Mr. President and Senators. We want to show in this matter by proof that no snap judgment was taken in regard to it.

Mr. CARPENTER. That is immaterial.

Mr. Manager McMAHON. It may be material.

Mr. CARPENTER. How?

Mr. Manager McMAHON. I am not speaking now in regard to the issue; but at the time appointed when he was to be there by appointment, the committee was there and waited until they received notice, whatever that may be, from the counsel for the defendant in this case. I think we are entitled to show it.

Mr. CARPENTER. The only object, as I understand, of that testimony is to exonerate the committee, which nobody has censured.

Mr. Manager McMAHON. No, I beg pardon; it is to show that the defendant expressly declined to avail himself of the opportunity to cross-examine and produce proof in his exoneration.

Mr. CARPENTER. He did just what any good lawyer would have advised him to do if he had.

Mr. Manager McMAHON. I am afraid he fell into the hands of the lawyers too soon.

Mr. Manager HOAR. He acted as a guilty man would.

Mr. CARPENTER. No lawyer who could earn $500 a year would

advise any man accused of crime to put in his appearance in the grand-jury room if they would let him. No lawyer ever thought of doing such a thing.

Mr. Manager McMAHON. I know of many an honest man who would have been glad of the opportunity to have the witnesses called in the grand-jury room in order that his good name might not be tarnished by a bill of indictment.

Mr. CARPENTER. It was because he had not a good lawyer.

Mr. Manager McMAHON. No, because the law does not permit it.

The PRESIDENT *pro tempore*. Shall this interrogatory be admitted?

The question was decided in the negative.

The PRESIDENT *pro tempore*. The objection is sustained.

Mr. Manager McMAHON. Now we offer in evidence the testimony, the original paper, that was taken before the committee, and I will state to the court that we waive the reading of it. We do not care about its being read; we put it in evidence.

Mr. CARPENTER. We want it to go out, but if it is to go in we want it read.

Mr. Manager McMAHON. I offer it in evidence because of course it is impossible for this court to know to what extent the defendant was implicated by this testimony unless we know just exactly what the testimony was; and the strength of the inference, or its weakness, must of course be determined by the strength or weakness of the charges and the directness of the testimony.

Mr. CARPENTER. The whole subject comes right to this: A man is accused of the commission of a crime; he goes to a lawyer and takes his advice, and his lawyer tells him to go home and stay until he is invited into court and then try his case there, not to try it before a committee of Congress, not to try it in the grand-jury room, not to try it in the newspapers, but to hold his tongue; and he does it; and proving that fact is to convict him of the offense charged!

Mr. Manager McMAHON. Usually good advice to a guilty man, "hold your tongue."

Mr. CARPENTER. Mr. President, we never can discuss anything here without being charged with guilt.

Mr. LOGAN. Mr. President, I am compelled, if nobody else does, to call the attention of the President to the fact that this is not a police court. This gives us a good deal of evidence of it. I do not think it is the right way to manage the case.

Mr. Manager McMAHON. Mr. President, if any allusion is made to me, with all due respect to the honorable Senator, I propose to disclaim having acted in any manner looking to conduct before a police court, and to say that upon that question I go to the country between the honorable member of the court and myself.

The PRESIDENT *pro tempore*. Objection is made to the testimony.

Mr. LOGAN. Mr. President, I have made no assault on the manager, and I do not know that the Senate is bound to sit here and be assailed by a manager. If the court is, however, we had better retire. This side-bar remark that is going on constantly is more like a police court than a Senate. Lawyers know that to be true. If lawyers are going to demean themselves as though they were in a police court, they must expect somebody that is a part of the court to take notice of it. And I do not propose to be criticised by any gentleman either because I call attention to the fact that we expect the case to be handled properly.

Mr. BAYARD. Mr. President, is this debate in order?

The PRESIDENT *pro tempore*. Debate is not in order.

Mr. BAYARD. I object to it, then.

Mr. Manager McMAHON. I simply desire to state that as a lawyer I always have a right to maintain my standing in any court in the land; I do not care what it is, the United States Senate, the Supreme Court of the United States, or any thing else. It never has been denied to any lawyer anywhere, except in the most arbitrary and meanest days of the history of judicature in England.

The PRESIDENT *pro tempore*. Objection is raised to the testimony. The Chair will submit the question to the Senate.

Mr. CONKLING. I should like to know to what testimony and to what offer objection is made.

Mr. CARPENTER. The testimony of Marsh before the committee.

The PRESIDENT *pro tempore*. Testimony alluding to Belknap before the House Committee on War Expenditures.

Mr. CONKLING. Shall I understand that it is now proposed to offer here for any purpose the testimony delivered by Marsh before the committee of the House? If it is, if nobody else does, I raise an objection to that, on the ground that it is incompetent; and I ask for the yeas and nays upon it.

Mr. CARPENTER. I have raised the objection.

Mr. CONKLING. I did not know whether counsel had or not.

Mr. Manager McMAHON. We certainly offer it as competent. We do not want any misunderstanding on that point.

Mr. KERNAN. Permit me to make an inquiry. Is the object to have it read as evidence in this case, or read as a communication made to Mr. Belknap?

Mr. Manager McMAHON. To have it read precisely upon the principle that the article in the New York Tribune of February 15, 1872, was read, as a charge of certain matters therein stated, but not as evidence of the truth of anything therein stated. Every lawyer, I think, can see the difference.

Mr. CONKLING. Then I beg to inquire whether the whole purpose is not achieved by having this witness, Mr. CLYMER, state that the evidence there given from Marsh and others was brought home to Belknap and an offer made to him to present himself as a witness or to cross-examine any other witness, and that he stood mute; whether it can be possible that it is necessary to spread upon the record of this trial all the testimony of Marsh, additional, variant, or similar as it may have been, in order to acquaint this court with just what it was that Belknap knew was alleged against him. Of course I do not mean to doubt that the offer has for the motive precisely that stated; but I cannot shut my eyes to the fact that the Senate will be overriding well-settled rules of evidence, as I understand them, by permitting this testimony to go in.

Mr. EDMUNDS. I call my friend to order, as I promised I would some time ago. It gives me great pleasure to hear him; but I object to debate.

Mr. CONKLING. If we observe the rule all around, I do not object; but others must if I do.

The PRESIDENT *pro tempore*. Debate is not in order.

Mr. BAYARD. In order that I may comprehend the question upon which the yeas and nays——

Mr. EDMUNDS. I insist on the rule.

The PRESIDENT *pro tempore*. Debate is not in order.

Mr. BAYARD. I rise to ask a question of the Chair.

The PRESIDENT *pro tempore*. Is there objection? The Senator will state his question.

Mr. BAYARD. The yeas and nays, I understand, have been called for by the Senator from New York upon a motion of the managers to admit certain testimony. As I understand the question upon which we are called to vote—and if I do not understand it my expression of my understanding can be corrected by the Chair——

The PRESIDENT *pro tempore*. The Senator from Vermont objects to any debate. The Chair must enforce the rule. If the Senator has a question to propound, the Chair will hear it.

Mr. BAYARD. I am endeavoring to state it in order that it may be understood by the Chair. I do not understand that this testimony is sought to be introduced in corroboration of what has been——

Mr. EDMUNDS. That is debate, and I object.

The PRESIDENT *pro tempore*. The Senator from Vermont objects.

Mr. BAYARD. Then I ask the Chair whether it is in order to object to my application for an understanding of the question upon which I am called to vote?

The PRESIDENT *pro tempore*. The Senator from Vermont has objected to debate.

Mr. BAYARD. I am not debating, Mr. President; I am not proposing to debate; I am proposing to state the question, and simply ask whether this is the question upon which I am called upon to vote——

Mr. EDMUNDS. That can be shown by reading the question.

The PRESIDENT *pro tempore*. The question will be reported, and the Senate will then see what is the question now pending. It is the admission of the testimony proposed by the managers, to which objection was raised by the counsel. The reporter will now read the question, and then the Chair will hear the Senator from Delaware, if he has a question to put to the Chair. But Senators object to debate. The rule denies debate to any Senator. The Chair must enforce the rule.

Mr. BAYARD. I am aware of that, and have not sought debate. I will await the reading.

The PRESIDENT *pro tempore*. The reporter will read the question.

Mr. Manager McMAHON. There is no question. It is an offer.

The reporter read the offer, as follows:

Mr. Manager McMAHON. Now we offer in evidence the testimony, the original paper, that was taken before the committee.

Mr. BAYARD. That does not disclose the object and result of the question.

Mr. EDMUNDS. That is debate, Mr. President.

The PRESIDENT *pro tempore*. The Senator may ask for an explanation and it can be given on the part of the managers or counsel; but the Senator from Vermont objects to debate, and it is debate to do anything more than ask a simple question.

Mr. BAYARD. Then I ask through the Chair that the question be put to the managers on the part of the House, what is the object and intent of this offer.

The PRESIDENT *pro tempore*. That is a proper question. The managers may explain.

Mr. CONKLING. That is not a question under the rule, if I may be allowed a suggestion. I am glad to have the Senator put the question; but under the rule he cannot even do that unless he reduces it to writing.

The PRESIDENT *pro tempore*. As the Senator from New York has alluded to the fact that the question was not put in writing, the Chair will say that it has not been done in order to facilitate business, and a moment ago one of the Senators was about to reduce a question to writing and the Senator from New York stated that the practice had been otherwise.

Mr. CONKLING. I think the rule is an absurd one.

The PRESIDENT *pro tempore*. The Chair to facilitate business has allowed questions to be put without being reduced to writing by their propounders.

Mr. Manager McMAHON. I think the honorable Senator from Delaware will remember that in my answer to the remark of the Senator from New York who sits farthest from me, [Mr. KERNAN,] I stated distinctly the object and purpose of this offer, not as evidence to this court of the truth of any fact therein stated, but simply for the purpose of showing that at a particular time certain charges from an authorized source were made against the defendant, which were read to him for the purpose of ascertaining what action he took after this was communicated to him. Now, the question that is put to me by the honorable Senator from New York who sits nearest to me, [Mr. CONKLING,] was, would it not be just as well to let the witness state that the testimony of Marsh was read to the Secretary of War, and thereupon he took the action——

Mr. CONKLING. And all the other testimony taken.

Mr. Manager McMAHON. There was no other testimony except that and the agreement. I would answer in this way: If we should propose to do that against the objection of the defendant, it would be one of the greatest wrongs and outrages probably that ever could be perpetrated, for how can this Senate know as a court, what right has it to have any knowledge as a court, of what was actually read to the honorable Secretary of War except it is first produced in evidence here and read as we read the New York Tribune article? We might say that the testimony of Marsh was very different or very like; it is a mere matter of conjecture what the testimony of Mr. Marsh before that committee was. It might have been exculpatory or it might not have been; but you cannot state, sitting as judges, what it was unless you see the paper and have it read to you; and I cannot concieve of a greater wrong that could be committed to the defendant than for us to ask merely, "Was Marsh examined before you?" and for the witness to say "Yes;" and then to ask, "Did he then resign?" and let him be permitted to say "Yes." The court would say, if we took that action, "We want to scrutinize with our own eyes what it was that was done;" and the fact that it has gone to the country in a published pamphlet from the House of Representatives makes it no more evidence in this case than any of the statements in the newspapers in regard to it, which have never been offered either in the House or here.

Mr. CARPENTER. Mr. President, one word in reply. If it is competent to introduce this testimony given by Marsh before the House committee simply because Belknap did not say anything in reply to it, is it not competent to introduce here every newspaper article that has charged him, from Maine to California, with being guilty of this offense, and with being a thief and all that sort of thing, to which he has, under direction of counsel, never opened his mouth, to which he has never written a reply, of which he has never taken the slightest notice? Upon what principle could you introduce the deposition of this witness simply because it was read to the defendant and he said nothing, and exclude a newspaper article which you could show he had seen and to which he had said nothing? We did not care when the article from the New York Tribune was offered to object for certain reasons. It was very doubtful in our mind whether that was legal testimony; but we did not care to object to it. But here is an offer made now the result of which, if sustained, is that if they can show that a newspaper has published an article charging him with being a thief in this particular, calling him all the hard names they can think of in consequence of these charges made here, and that he read it and threw it down, making no remark, that would be as competent as this testimony. It must be borne in mind that that committee had no jurisdiction over Mr. Belknap. Mr. Belknap could have no trial before that committee. A few things may be mentioned in a political trial that would not be proper in a court of law. It was well known that that committee was of an opposite political faith, and it was not expected that much justice would be done to Mr. Belknap or any other republican; and any lawyer, I think, who had been consulted by Mr. Belknap would have given him the advice which he did receive, and that was to let the committee alone till they got through, and then see what their charges amounted to. But if the managers can introduce this evidence upon the ground that it was read to him and he said nothing, I submit that every newspaper article which can be shown to have been seen by him is evidence if they can also show that he read it and made no reply.

Mr. BAYARD. I send an inquiry to the Chair.

The PRESIDENT *pro tempore*. The inquiry will be read.

The Chief Clerk read as follows:

Is it the object of the present inquiry to corroborate or discredit the testimony of Marsh, the witness, or to establish any fact therein referred to, or solely to prove what was the action or conduct of Mr. Belknap when the fact that such charges had been made against him was so made known to him?

The PRESIDENT *pro tempore*. That is addressed to the managers.

Mr. Manager McMAHON. Mr. President, the question put to the managers is as follows: "Is it the object of the present inquiry to corroborate or discredit the testimony of Marsh." In the first place, I will answer in detail that it is to corroborate Mr. Marsh in just this far, not as evidence of any facts stated therein, but when the charge was made by Marsh the Secretary of War by his conduct admitted the truthfulness of it.

Secondly, "Or to establish any fact therein referred to." Not as evidence of any fact therein referred to except in this way, when the fact is charged against the defendant, to draw a conclusion as to its truthfulness or untruthfulness by the action of the Secretary of War in regard to it.

"Or solely to prove what was the action or conduct of Mr. Belknap when the fact that such charges had been made against him was so made known to him." It is solely for that purpose; but from that we draw our conclusion as to the truthfulness or untruthfulness of the charge there stated, but do not seek to establish any minor details on that point.

Mr. CARPENTER. In other words, the manager finally comes to admit that he wants to give that testimony on the issue in this case.

Mr. Manager McMAHON. I do not in the way you put it.

Mr. CARPENTER. The manager does it in the way he puts it.

The PRESIDENT *pro tempore*. The question is, Shall the testimony be admitted?

Mr. CONKLING. On that I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. BLAIR. Mr. President and Senators——

Mr. Manager McMAHON. I want to interpose an objection. Debate has long since been exhausted on this question. I began half an hour ago. Just now I was simply answering a question put by a Senator after the debate was all over.

Mr. CARPENTER. It broke out afresh on the question put by the Senator from Delaware.

The PRESIDENT *pro tempore*. The Chair will enforce the rule. Colloquies must cease. Objection has been made, and the Chair must enforce the rule. He will state that on the part of Senators, to guard against any breach of the rules and unpleasantness, he will require all questions to be reduced to writing; and then certainly there can be no debate. The counsel will proceed.

Mr. BLAIR. I invite the Senators to consider the importance of the question as developed by the inquiry now put by the honorable Senator from Delaware and by the admission of the counsel on the other side. The Senate will see at a glance that the admission of this testimony operates, as they contend, to confirm their proof as they now offer it here, at the same time that we would not be authorized to quote that testimony or to use it for the purpose of vindicating the defendant upon this trial. It therefore presents a case of peculiar hardship, one where they attempt to bolster up their case by a proceeding which, while it may have that effect on their side, enables them to go into testimony that we should not be able to use on this trial. In that testimony honorable Senators here know, who have read it, that this whole matter is developed, and we have come here expecting that the counsel for the Government would go into the matter and give the whole story as it is therein contained. Now they propose to give it in evidence, so that they can use it for their purposes, but where we cannot use it for any purpose.

Mr. OGLESBY. Does the decision of the Chair, that no questions can be put hereafter without being reduced to writing, cover questions put by the court to one of the counsel?

The PRESIDENT *pro tempore*. It covers all questions put by members of the Senate. The rule does not require the questions on the part of the parties to be reduced to writing unless so requested by the Chair or a Senator; but all questions put by members of the Senate the rule requires shall be put in writing.

Mr. CONKLING. That is confined to witnesses; and a Senator is not, under the rule, permitted to put a question to anybody else I submit.

Mr. OGLESBY. I desired to put a question to the counsel just on the floor; but if I cannot do so without reducing it to writing, as it will be a long one, I shall abandon it.

The PRESIDENT *pro tempore*. The Chair is merely enforcing the rule; and the allowing of a practice without the rule has been the occasion of a little disturbance. In order to avoid this in the future, the Chair takes this ground of enforcing the rule, and certainly he is right. If the Senate see fit to vary the rule by directing the Chair, the Chair will follow the direction of the Senate. The question is, Shall this testimony taken before the House committee be admitted? upon which question the yeas and nays have been ordered.

Mr. BAYARD. The Chair will pardon me. I think it is restricted to a statement made by Marsh exhibited by the testimony.

Mr. CONKLING. That is the whole evidence.

The PRESIDENT *pro tempore*. The roll-call will proceed.

The question being taken by yeas and nays, resulted—yeas 24, nays 13; as follows:

YEAS—Messrs. Bayard, Booth, Caperton, Cockrell, Dennis, Edmunds, Gordon, Hamilton, Hitchcock, Howe, Kernan, Key, McCreery, McDonald, Merrimon, Morrill, Norwood, Oglesby, Ransom, Robertson, Stevenson, Wallace, Whyte, and Withers—24.

NAYS—Messrs. Bruce, Cameron of Wisconsin, Conkling, Cooper, Cragin, Dawes, Ferry, Frelinghuysen, Ingalls, Logan, Maxey, Paddock, and Wright—13.

NOT VOTING—Messrs. Alcorn, Allison, Anthony, Barnum, Bogy, Boutwell, Burnside, Cameron of Pennsylvania, Christiancy, Clayton, Conover, Davis, Dorsey, Eaton, Goldthwaite, Hamlin, Harvey, Johnston, Jones of Florida, Jones of Nevada, Kelly, McMillan, Mitchell, Morton, Patterson, Randolph, Sargent, Saulsbury, Sharon, Sherman, Spencer, Thurman, Wadleigh, West, and Windom—35.

So the question was decided in the affirmative.

The PRESIDENT *pro tempore*. The testimony will be admitted.

Mr. Manager McMAHON. Upon the part of the managers we waive the reading of it with the understanding that it may be considered in evidence. I expect the gentlemen and Senators have a printed copy of it.

Mr. CARPENTER. You cannot consider anything in evidence which is not offered and read.

Mr. Manager McMAHON. At the request of counsel for the defendant, it may be read.

The WITNESS. I ask the Secretary to be kind enough to read it.

Mr. CARPENTER. I want it understood that it is not read at my request.

The PRESIDENT *pro tempore*. It is read at the request of the managers. The reading will proceed.

Mr. Manager HOAR. Perhaps there is some misunderstanding. We understand that this document contains testimony substantially the same in substance as has been given by Mr. Marsh here, although the document is in, therefore we think that it would be a waste of time to have it read over; and we suggest to counsel on the other side to treat it as in without having it read, with the understanding that they can point out any difference in it if they see fit to do so hereafter. Do they object to that suggestion or accede to it?

Mr. CARPENTER. We object.

Mr. Manager HOAR. Then it will have to be read.

The PRESIDENT *pro tempore*. Is there objection to the Secretary reading from the print?

Mr. CARPENTER. We want the manuscript. Of course the printed copy is not offered.

Mr. Manager HOAR. It is the same.

Mr. CARPENTER. We want the evidence that is offered read.

Mr. Manager McMAHON. Mr. President, I call upon the witness to read it. He has a peculiar handwriting which calls for peculiar eyes.

The PRESIDENT *pro tempore*. The witness will read the paper. The witness read from manuscript, as follows:

Mr. CALEB P. MARSH, one of the witnesses ordered to be subpœnaed by the committee, being present, was duly sworn according to law:

By the CHAIRMAN:

Question. Where do you reside?

Answer. I reside at No. 30 West Fifty-seventh street, New York; have resided in New York about eight years.

Q. Were you or not appointed or tendered an appointment as a post-trader at Fort Sill, Indian Territory, in the fall of 1870, by the Secretary of War? If so, under what circumstances was said appointment secured to you? State also if you were commissioned by the Secretary as such post-trader, or, if not, who was so commissioned; and, if any other person than yourself was so commissioned, give his name, the reasons why he was commissioned; if any agreement was made between you and the appointee, state it, or produce it, if in writing; and was such agreement made with the knowledge of the Secretary of War? and state the circumstances connected with the making of that agreement and all the transactions in detail thereunder, fully and particularly, as if you were specially interrogated in regard to the several transactions and so fully as to save the necessity of repeated interrogatories.

The WITNESS. Let me suggest that it would be a great convenience to me if counsel would permit me to read from the printed copy. I can scarcely decipher this manuscript. If, however, it is insisted upon, I shall proceed with the reading; but it is mere labor imposed.

Mr. CARPENTER. If the witness has compared the print with the manuscript so that he knows they are exactly alike, there is no objection; or if he will do so now he may.

The WITNESS. I will proceed with the reading.

The WITNESS. In reply to your questions, I would state that in the summer of 1870 myself and wife spent some weeks at Long Branch, and on our return to New York Mrs. Belknap and Mrs. Bower, by our invitation, came for a visit to our house. Mrs. Belknap was ill during this visit some three or four weeks, and I suppose in consequence of our kindness to her she felt under some obligations, for she asked me one day in the course of a conversation why I did not apply for a post-tradership on the frontier. I asked what they were, and was told that they were, many of them, very lucrative offices or posts in the gift of the Secretary of War, and that if I wanted one she would ask the Secretary for one for me. Upon my replying that I thought such offices belonged to disabled soldiers, and besides that I was without political influence, she answered that politicians got such places, &c. I do not remember saying that if I had a valuable post of that kind that I would remember her, but I do remember her saying something like this: "If I can prevail upon the Secretary of War to award you a post you must be careful to say nothing to him about presents, for a man once offered him $10,000 for a tradership of this kind, and he told him that if he did not leave the office he would kick him down stairs." Remembering as I do this story, I presume the antecedent statement to be correct.

Mrs. Belknap and Mrs. Bower returned to Washington, and a few weeks thereafter Mrs. Belknap sent me word to come over. I did so. She then told me that the post-tradership at Fort Sill was vacant; that it was a valuable post, as she understood, and that she had either asked for it for me or had prevailed upon the Secretary of War to agree to give it to me. At all events, I called upon the Secretary of War, and as near as I can remember made application for this post in a regular printed form. The Secretary said he would appoint me if I could bring proper recommendatory letters, and this I said I could do. Either Mrs. Belknap or the Secretary told me that the present trader at the post, John S. Evans, was an applicant for re-appointment, and that I had better see him, he being in the city, as it would not be fair to turn him out office without some notice, as he would lose largely on his buildings, merchandise, &c., if the office was taken from him, and that it would be proper and just for me to make some arrangement with him for their purchase if I wanted to run the post myself. I saw Evans and found him alarmed at the prospect of losing the place. I remember that he said that a firm of western post-traders, who claimed a good deal of influence with the Secretary of War, had promised to have him appointed, but he found on coming to Washington this firm to be entirely without influence. Mr. Evans first proposed a partnership, which I declined, and then a bonus of a certain portion of the profits if I would allow him to hold the position and continue the business. We finally agreed upon $15,000 per year. Mr. Evans and myself went on to New York together, where the contract was made and executed, which is herewith submitted. (Paper marked A.) During our trip over, however, Mr. Evans saw something in the Army and Navy Journal which led him to think that some of the troops were to be removed from the fort, and that he had offered too large a sum, and before the contract was drawn it was reduced by agreement to $12,000, the same being payable quarterly in advance.

When the first remittance came to me, very probably in November, 1870, I sent one-half thereof to Mrs. Belknap; either, I presume, certificates of deposit or bank-notes by express. Being in Washington at a funeral some weeks after this, I had a conversation with Mrs. Bower to the following purport, as far as I can now remember, but must say that just here my memory is exceedingly indistinct, and I judge in part perhaps from what followed as to the details of the conversation. I went upstairs in the nursery with Mrs. Bower to see the baby. I said to her, "This child will have money coming to it before a great while." She said, "Yes. The mother gave the child to me, and told me that the money coming from me she must take and keep for it." I said, "All right," and it seems to me I said that perhaps the father ought to be consulted. I say it seems so, and yet I can give no reason for it, for as far as I know the father knew nothing of any money transactions between the mother and myself. I have a faint recollection of a remark of Mrs. Bower that if I sent the money to the father that it belonged to her, and that she would get it anyway. I certainly had some understanding, then or subsequently, with her or him, for when the next payment came due and was paid, I sent the one-half thereof to the Secretary of War, and have continued substantially from that day forward to the present time to do the same. About, I should say, one and a half to two years after the commencement of these payments I reduced the amount to $6,000 per annum. The reason of this reduction was partly because of the continued complaints on the part of Mr. Evans and his partner, and partly, so far as I now remember, in consequence of an article in the newspapers about that time reflecting on the injustice done to soldiers at this post caused by exorbitant charges made necessary on the part of the trader by reason of the payment of this bonus.

To the best of my knowledge and belief the above is a true statement of all the facts in the case and as complete as I can remember occurrences of so many years ago.

Q. State how the payments were made to the Secretary of War subsequent to the funeral of his then wife, which you attended in Washington in December, 1870; whether in cash, by check, draft, certificate of deposit, bonds, or by express, or otherwise.

A. The money was sent according to the instructions of the Secretary of War; sometimes in bank-notes, by Adams' Express. I think on one or more occasions by certificate of deposit on the National Bank of Commerce in New York. Sometimes I have paid him in New York in person, except the first payment in the fall of 1870 and the last in December, 1875; all were made to the Secretary in the modes I have stated, unless, perhaps upon one or two occasions at his instance I bought a Government bond with the moneys in my hand arising from the contract with Evans, which I either sent or handed to him.

By Mr. BLACKBURN:

Q. Can you state the sum in the aggregate received by you under the contract with Evans; and what portion thereof have you paid to the Secretary of War, including the first and last payments, which you have stated were not paid to him?

A. I have no memorandum whatever on which to make answer. It is a very simple calculation. The first payment to me by Evans was made in the fall of 1870, at the rate of $12,000 a year. He paid at that rate about a year and a half or two years, and since then at the rate of $6,000 a year. It would aggregate about $40,000, the one-half of which I have disposed of as above stated.

By the CHAIRMAN:

Q. Did you receive letters from the Secretary of War acknowledging the receipt of the sums forwarded to him in the manner you have stated; or did he acknowledge the receipt of the same in any way?

A. Usually, when I sent money by express, I would send him the receipt of the company, which he would either return marked "O K," or otherwise acknowledge the receipt of the same. Sometimes I paid it to him in person in New York, when his receipt was unnecessary. I have not preserved any receipts or letters. When sent by express, I always deposited the money personally and took a receipt from them.

Q. Have you at any time had any conversation with the Secretary of War regarding the post-tradership at Fort Sill; or have you corresponded with him regarding the same?

A. O, frequently. I have forwarded requests to the Secretary, made to me by Mr. Evans, wishing privileges about the fort, such as to sell liquor, &c. I don't remember what action was taken upon them; they were not returned to me. As far as I know, Evans corresponded regarding affairs at Fort Sill through me with the Secretary of War. I never heard of any other way.

Q. Was the contract between you and Evans ever the subject of conversation between you and the Secretary of War?

A. It never was, as I remember, save in one instance, but am not positive; yet it seems to me when the article in the newspapers regarding affairs at Fort Sill, probably in 1872, about the time the reduction was made in the payments from $12,000 to $6,000 appeared, the next time I saw the Secretary of War he asked me if I had a contract with Evans. I told him I had. I never showed it to him or any one else until I produced it here.

Q. After receiving the telegraphic subpœna from the Sergeant-at-Arms to appear before this committee, which was on Monday, the 21st of this month, did you come to Washington; and, if so, had you an interview with the Secretary of War, and when and where?

A. I came to Washington on Wednesday, the 23d of this month; I went to the house of the Secretary of War, staid Wednesday night, and returned on Thursday morning. I showed him the telegraphic subpœna and asked him what it meant. He said he supposed it was to state before the committee what I knew about our transactions together. I said I did not like to appear, because I thought my testimony would be damaging to, or would implicate him or give him trouble. He said he thought not, and advised me to stay and meet the committee. During that evening my conversation was chiefly with his wife, he being present part of the time and understanding the general tenor of our conversation. She suggested that I could make a statement which would satisfy the committee and exculpate the Secretary. She wanted me to go before the committee and represent that she and I had business transactions together for many years, and that all this money I had sent the Secretary was money that she had from time to time deposited with me as a kind of banker, and that she had instructed me to send it to the Secretary for her. I dined there and spent the evening, and staid all night, retiring about twelve o clock. The evening was devoted to discussing this matter. I told her that the statement would not hold water before the committee, and even if it would I could not make it. At the same time I was so wrought up and had such anxiety—she pressing and pressing me about it—and having slept little since the receipt of the subpœna, and sympathizing with their condition, I did not give them a positive answer that night.

I went to bed at twelve o'clock, and I do not suppose I slept a wink. They said they would breakfast about nine o'clock. I came down about eight and met the Secretary alone. I told him I thought I had better leave and get out of the country, for I would not perjure myself for any one; that I could afford to have my throat cut, but not to perjure myself. He replied he did not wish me to do that, that we could fix it up some other way. I said, "I think I had better leave the country." The Secretary said I would ruin him if I left. I said, "If I go before the committee I will surely ruin you, for I will tell the truth." He was greatly agitated. When I came down stairs to leave, he followed me and asked me into the parlor, and said, "I want to make a last appeal to you to stay longer." He said if I went he would be ruined. I said I would ruin him if I went before the committee, and I left and took the limited express to New York.

On reaching home I consulted my attorney, asking him if the committee could reach me by subpœna if I left the country. I stated the case to him. (Mr. Bartlett, 120 Broadway, Equitable Building.) He asked if I was subpœnaed. I told him I had a telegraphic dispatch calling me to Washington. He said that if a subpœna had been duly served they could give me considerable trouble, but that on a telegraphic message they could not reach me if I was out of the country. I asked him how long I would have to stay. He said if the committee had leave to sit during the recess I could not come back until the present Congress expired. I then went home and found there a dispatch from Dr. William Tomlinson, the brother-in-law of the Secretary. Its purport was not to leave; that he had good news; that he was coming over. I determined not to be governed by it; that I was going; that they only wished to fix up some new story, but that I would not be a party to it. My trunk was being packed to leave.

At about midnight Thursday, February 24, Dr. Tomlinson arrived at my house. He said: "I have seen JOE BLACKBURN. He is a cousin of mine, who said he thought if I would write a letter something like the one which he (Tomlinson) would suggest that there would be no further investigation; and if there was they would ask no questions about it that it would be difficult for me to answer, and that Mr. BLACKBURN said he thought that if the committee still wanted to examine me they would appoint a subcommittee and come over to New York to do so." He came to my bedroom, and I told him to go into the sitting-room and draw the sketch of the proposed letter, and that when dressed I would join him, and I would write such a letter as he wanted, if I could. I wrote the letter from the sketch of Tomlinson; the endeavor was to exculpate the Secretary; there was nothing in it untrue to the best of my recollection, but it did not state the whole truth; it was a very short letter. He took it with the contract inclosed. He said he would take the letter and contract to Mr. BLACKBURN, who would show it to the committee, and that would be the end of it. He left my house at two o'clock Friday morning. At midnight Friday night I was roused up, and had the subpœna of the committee served on me. Saturday morning about eight o'clock Dr. Tomlinson again appeared. He said he had been to Washington. He wanted to know the first thing if I had been subpœnaed. I told him I had. He began talking the whole thing over again, still wanting me to say before the committee what was suggested at the Secretary's. (At the interview on Thursday night he wanted me to telegraph to the committee, before which I had been subpœnaed by telegraph to appear the next morning—Friday—that my wife was sick and that I could not attend. My wife being sick, I consented and did so telegraph.

Recurring to the interview again on Saturday morning, I said I could not make the statement he desired. He said he had seen Mr. BLACKBURN in the interval, and had shown him the letter of Tomlinson. He then returned it and the contract to me. I said, "Dr. Tomlinson, I have thought of this thing so much it has nearly made me crazy. I am not going to talk about it any more. We will go down to my lawyer and consult him about it;" my object being to have a lawyer to tell him how ridiculous the story he wanted me to tell would appear before the committee. We went down and called on Mr. Bartlett, and I told him the whole truth in the presence of Dr. Tomlinson. Bartlett said I could not manufacture any story if I wanted, and must not if I could. Dr. Tomlinson still insisted that if I could swear that General Belknap knew nothing of the arrangement with his sister, Mrs. Belknap, deceased, and if I could swear that at the time I was at her funeral I made an arrangement with Mrs. Bower, the present Mrs. Belknap, by which I was to send her all this money through the Secretary, that the whole thing could still be settled. I replied, "I cannot state it, for it is not the truth;" my impression then being that at that funeral I had said something about the matter to General Belknap. Tomlinson said, "If you could swear to that you had better leave the country." Mr. Bartlett said, "This is a bad business; it is not a legal question you have submitted to me, and in the position of affairs the Secretary of War should decide if you should go to Washington or leave the country." Dr. Tomlinson said he would return to Washington; he prepared two formulas of telegrams which I would understand.

One was, "I hope your wife is well," which was to be interpreted to leave the country.

The other was, "I hope your wife is better," which meant, "Come to Washington."

We then parted. On going home in the street-cars, thinking the whole thing over, about the conversation at the time of the funeral, I made up my mind that, although I had stated to Mr. Bartlett that I thought I had had some conversation at the time of the funeral with the Secretary of War about sending this money, yet I was so undecided about it that I was certainly willing to give the Secretary the benefit of the doubt. I thought I would see Tomlinson and tell him. We parted at one o'clock. He was to leave for Washington at three o'clock. I went to the depot and met him, and told him that on thinking over the matter I was so undecided about the conversation with the Secretary at the time of the funeral that I would give him the benefit of the doubt. He said, "I am very glad to hear this, because my sister, Mrs. Belknap, said this was the fact."

That Saturday I got a telegraphic dispatch from Mrs. Belknap which said: "Come to Washington to-night; it is necessary." I received it in the evening. Next morning (last Saturday) I received a dispatch from Dr. Tomlinson: "I hope your wife is better;" which according to our agreement meant "Come to Washington." In the afternoon I got a second dispatch from Dr. Tomlinson, as follows: "Come without fail. Answer." I answered: "I shall come to-night, without fail." I was very glad not to have to leave the country, the conviction having grown on my mind that it would do no good. I reached Washington yesterday morning at 6.30, and stopped at the Arlington, my wife being with me. Was shown to a temporary room at about 7 o'clock. I laid down, being greatly fatigued, and about 8 o'clock Dr. Tomlinson called me to the door of the room. He said he had seen BLACKBURN, and that he still thought this matter could be fixed up without any trouble. He asked me if I had the letter I had written to the committee on Thursday night. I said, "I had not." He said, "BLACKBURN says you had better write another of the same purport and send it up to the committee, with a note, explaining why it did not arrive sooner." I did so. [The note and letter are marked "B" and "C."]

Shortly before 2 o'clock p. m. yesterday I came to the Capitol to meet the committee, and Dr. Tomlinson found me in the corridor near the committee-room door. He said: "You are going before the committee, and I want you to remember that there was no arrangement with you and the Secretary of War at the time of the funeral, and that the money you have always paid to General Belknap was for Mrs. Belknap, and by her direction." I told him I was going before the committee to tell the whole story, as far as I could recollect it. I said I had thought of leaving the country, but was overruled; and that now I shall tell the truth, and the whole truth, and nothing but the truth. He said: "I don't want you to tell any lies; I only want you to tell the truth, and that is the truth." I said, "The truth I shall certainly tell, and if it does not hurt General Belknap, no one will be more rejoiced than myself." I entered the committee-room at about 2 o'clock yesterday, and without being sworn I made a statement to certain members of the committee of the facts in the case—more briefly, but substantially as I have now answered in reply to your chief interrogatory.

When I returned to the hotel yesterday afternoon, Dr. Tomlinson was waiting at my room at the Arlington to see me. He asked me how I got along before the committee. I told him I had told the story from beginning to end, and that at the request of the gentlemen present I was going to reduce it to writing, and appear before the committee to-day at 10.30 with it. He wanted to know how I had stated the fact that all these payments to the Secretary had been made in consequence of the original agreement made with Mrs. Belknap. I said I had stated the facts as they were, according to my best recollection and belief. I told him I would furnish him a copy of the statement I would make before the committee. I prepared the statement last night, and gave him a copy of it about eight o'clock this morning, being substantially a copy of that I have submitted as an answer to your chief interrogatory, save that I have filled up the blanks.

Dr. Tomlinson came back to my room at about 7.30 last evening, and I asked him whether he had seen Mr. BLACKBURN since I had made my statement in the afternoon, and what impression it had made upon the gentlemen who heard it. He said he did not like to say he had seen Mr. BLACKBURN, but he said he had seen one of the committee who expressed the opinion that my statement would involve the Secretary. He then made a stronger appeal to me than ever before, saying that I was the friend of the Secretary; that if this thing came out it would ruin him; that his wife was in great distress about it and he himself, as her brother and friend of the family, was in great trouble, and that if I could state—. I said "Stop, Dr. Tomlinson; I have about finished my written statement, and I will read it to you." I then read it to him. He said he did not see but that it was all right; that things could be explained yet if they could prove that this money was originally sent to General Belknap by Mrs. Belknap's order. General Belknap would be subpœnaed and would prove to the committee that Mrs. Belknap's estate is entirely separate from his, and that this money received through me he had always kept distinct from his and for her.

Q. Did you ever have any business relations of any kind or nature whatever with the late Mrs. Belknap, or the present Mrs. Belknap, or either of them, other than those arising from this Fort Sill tradership? Have you now, or have you ever had, any sum or sums of money, or any evidences of indebtedness or securities of any sort or description whatever, belonging to either of them; or have you at any time been indebted to either of them in any way, manner, form, or description?

A. Never. The present Mrs. Belknap, years ago, may have consulted me on business matters; but there were no monetary transactions whatever between us other than I have heretofore stated.

Q. When was the baby of the late Mrs. Belknap born, and when did it die?

A. The baby of the late Mrs. Belknap was born in the autumn of 1870; died during the summer of 1871.

By Mr. ROBBINS:

Q. In the conversation had with the present Mrs. Belknap, at the funeral of her sister, in December, 1870, or in any other conversation had with her or any other person at any time, was it the understanding that the money you were to pay, and were paying, was to be the money of Mrs. Belknap, the present wife of the Secretary of War?

A. It was not.

The foregoing deposition and statement, made under oath, having been carefully read over in full to Mr. Caleb P. Marsh, the witness, in the presence of the committee, and he having made such alterations and corrections therein as he deemed just, assents to it as a correct record of his testimony, and attests the same by his signature hereto attached.

CALEB P. MARSH.

WASHINGTON, *February* 29, 1876.

That is the paper that I read in the presence of the Secretary of War.

Q. (By Mr. Manager LYNDE.) Mr. CLYMER, was the contract between John S. Evans and Caleb P. Marsh read by you to General Belknap at that time?

A. It is my impression that it was read. I am not positive, but it is my impression that I read it to him. Although I may be in error about it, my strong impression is that I read it at the same time as it is referred to in the testimony.

By Mr. CARPENTER:

Q. Have you the report that was drawn by that committee here?

A. It is here. [Producing a paper.]

The PRESIDENT *pro tempore*. Are the counsel through with the witness?

Mr. CARPENTER. We will put no questions to Mr. CLYMER at present. We may want him at a subsequent stage of the case and can then recall him.

The WITNESS. I will merely state that I am very likely to leave town to-morrow, and would prefer to be examined to-day.

Mr. BLACK. You mean that you want to go. So do we.

The WITNESS. I do not think you can hold me by any process. I would much prefer, if you have any further examination, to go on with me to-day for I am anxious to leave town. I believe I am under no process and would not be compelled to remain here.

Mr. DAWES. We do not hear the witness.

The WITNESS. I say, Mr. Senator, that I am very anxious to leave town to-morrow and that I should prefer being examined to-day if I am to be subjected to any further examination.

The PRESIDENT *pro tempore*. Is there any arrangement between the counsel?

Mr. CARPENTER. We will put no questions to-night.

The WITNESS. I will try to be here in the morning, if I can.

Mr. Manager McMAHON. Mr. President, the managers upon the part of the House of Representatives are now through, with the exception of two witnesses, one of whom will probably answer their purposes. The two witnesses are Evans and Fisher, members of the firm of Evans & Co. The counsel for the defendant desire to have the testimony of Mr. Evans, and I suppose that we can enter into an agreement that when Mr. Evans comes, if he comes in the progress of the case, he may be called upon behalf of the Government; and if he is put upon the stand by the defense, that he may be cross-examined or examined in chief as to all the matters that are in this case and not simply confined to matters that may be put to him on the examination in chief. I understand that Mr. Evans is upon the road, but that the roads are broken up by the heavy freshets which we have had in the West and he may be delayed. Mr. Fisher has telegraphed that he is unable to come on account of sickness. I state these facts in order to put the Senate in possession of all the information we have.

Mr. FRELINGHUYSEN. I move that the Senate sitting as a court adjourn.

Mr. CARPENTER. I ask the Senator to withdraw that motion one moment.

Mr. FRELINGHUYSEN. I withdraw it.

Mr. CARPENTER. We can do nothing, Senators, on the part of the defense until we have Mr. Evans. We shall call very few witnesses, perhaps two or three, or four possibly. Mr. Evans, however, is our most important witness in our present opinion. We want him first, and I shall object in this case to the Government having any right to re-open the case after they rest it. If they can show any reason for an adjournment of two or three days to get the witness, they must do it now, and get their testimony and put it in. When they close, we want to know that they have closed. We can do nothing until the testimony of Mr. Evans is obtained.

Mr. Manager McMAHON. It seems to me, Mr. President, that that is a very peculiar statement. The counsel is willing to compel us to go on now without Evans; but he insists that the court shall wait for him to get Evans. If we cannot go on with Evans at this stage of the case, I do not see why we should not be allowed to examine him at a subsequent stage.

Mr. CARPENTER. Will the manager allow an interruption?

Mr. Manager McMAHON. Certainly.

Mr. CARPENTER. The manager entirely misunderstood me. I said we should insist upon their closing their case before we entered upon the defense. If they can make a showing for the purpose of getting delay in the absence of Mr. Evans that would be proper and save the opening of the case; but we insist that they shall close their case before we begin. I then said, looking to the fact that they might not take that delay, that I should call Mr. Evans.

Mr. Manager McMAHON. We do not ask any continuation of this case on account of Mr. Evans's absence. I think it is perfectly fair that if he comes in the mean time while the case is pending we shall have the right to examine him as well upon the matters you put to him as upon those matters that are within our knowledge.

Mr. Manager LAPHAM. Or, if they do not call him, that we shall have the right to call him.

Mr. THURMAN. I should like to know when this witness is expected. If neither party can proceed without him and he is not expected to-morrow, it is idle ceremony for the court to meet to-morrow.

Mr. Manager McMAHON. I do not mean to say that we cannot proceed without him.

Mr. THURMAN. The defense say they cannot.

Mr. BLACK, (to Mr. Manager McMAHON.) You mean to say that you cannot close without him.

Mr. Manager McMAHON. If he is to be in the case, we want to get the whole truth out of him; all he knows.

Mr. THURMAN. When is he expected? That is the question.

Mr. Manager McMAHON. I would suggest, Mr. President, that the Sergeant-at-Arms has a dispatch probably, which, if he will hand to the Secretary and let him read, will give some information.

Mr. CARPENTER. I should say, since consulting my colleagues, that we shall probably call a larger number of witnesses than I have named, but it will be to a single point, to be disposed of in five or ten minutes; so that our testimony will take but a very short time, although there may be more witnesses.

Mr. BAYARD. I should like to ask a question.

Mr. ANTHONY. I should like to ask counsel for the defense——

Mr. OGLESBY. You cannot without putting it in writing.

Mr. ANTHONY. I think I shall be allowed to do it.

Mr. CONKLING. You cannot do it, then, under the rule.

Mr. ANTHONY. I wish to know, if I can ask counsel for the defense, if they have any objection to examining any witnesses other than Mr. Evans now?

Mr. OGLESBY. I shall object unless the question is in writing.

Mr. BAYARD. I wish my question read.

The PRESIDENT *pro tempore*. The question proposed by the Senator from Delaware will be reported.

The Chief Clerk read as follows:

Will the managers or the counsel for the defense inform the court where the witness Evans was at last accounts, and what is the purport of their latest communication from him?

Mr. CARPENTER. The Sergeant-at-Arms can answer that.

Mr. Manager McMAHON. I ask the Secretary to read the dispatch.

The Chief Clerk read as follows:

[Telegram.]

Evans has left Sill. Must be *en route* to Washington. Fearful freshet in the Territory. I will be at Washington Wednesday morning.

J. I. FISHER.

Mr. THURMAN. What is the date of the dispatch?

The CHIEF CLERK. July 10.

Mr. THURMAN. Where is it from?

The CHIEF CLERK. From Saint Louis.

Mr. ANTHONY. I rise to a point of order. I ask if the question which I proposed to the counsel, having then been somewhat irregularly brought before the Senate, is not now competent to be answered by them? It is whether they cannot examine their witnesses other than Evans now?

Mr. CARPENTER. "Can we not examine them" is a very indefinite phrase. We could call some witnesses, but we want to put in our defense understandingly. We want the testimony of Evans first. He was on the first list of witnesses we furnished to the Senate to be subpœnaed, and he was in the first order of the Senate to subpœna on our behalf; and we want to examine him first. The other testimony will be very brief. If we were to go on now, an adjournment would still have to take place because he cannot get here for a day or two. It would be far more satisfactory to us to put in our testimony with Evans ahead.

Mr. EDMUNDS. Mr. President, I wish to ask the counsel a question. I submit it in writing.

The PRESIDENT *pro tempore*. The Senator from Vermont proposes an inquiry which will be reported.

The Chief Clerk read as follows:

Will the counsel state what they propose to prove by Evans?

Mr. CARPENTER. We will not, Mr. President, because we do not think it would be right to our client.

The PRESIDENT *pro tempore*. Has the Senator from New Jersey withdrawn his motion?

Mr. FRELINGHUYSEN. I now renew it.

The PRESIDENT *pro tempore*. The Senator from New Jersey moves that the Senate sitting in trial do now adjourn.

The motion was agreed to; and (at four o'clock and fifty minutes p. m.) the Senate sitting for the trial of the impeachment adjourned.

WEDNESDAY, *July* 12, 1876.

The PRESIDENT *pro tempore* having announced the arrival of the hour fixed, the legislative and executive business was suspended and the Senate proceeded to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap.

The usual proclamation was made by the Sergeant-at-Arms.

The PRESIDENT *pro tempore*. The House of Representatives will be notified as usual.

Messrs. McMAHON, JENKS, LAPHAM, and HOAR, of the managers on the part of the House of Representatives, appeared and were conducted to the seats assigned them.

The respondent appeared with his counsel, Messrs. Blair, Black, and Carpenter.

The Secretary proceeded to read the journal of the proceedings of the Senate sitting yesterday for the trial of the impeachment of William W. Belknap.

Mr. HARVEY. I move that the further reading of the journal be dispensed with.

The motion was agreed to.

The PRESIDENT *pro tempore*. The Senate is ready to proceed with the trial.

JOHN J. FISHER sworn and examined.

By Mr. Manager McMAHON:

Question. Where do you now reside?

Answer. In Saint Louis.

Q. Were you a member of the firm of John S. Evans & Co.?

A. Yes, sir.

Q. When was that firm organized or formed?

A. In 1868, I think.

Q. Were you in partnership in the business at Fort Sill?

A. Yes, sir.

Q. In what business?

A. Merchandising.

Q. Who held the appointment of post-trader at Fort Sill under the new law?

A. John S. Evans.

Q. How long had Mr. Evans been at Fort Sill prior to the passage of the law under which post-traders were appointed under that name?

A. He commenced business at Fort Sill when it was organized, when the fort was established.

Q. Were you in partnership with him prior to 1870?

A. Yes, sir.

Q. About how much had you invested there in goods, buildings, &c., at the time the law was passed?

A. We generally carried a stock of goods of from $30,000 to $40,000, and, when we had Indian goods there, sometimes $80,000, including all.

Q. About how much altogether?

A. With Indian goods and military goods, about $80,000. Sometimes it used to run down as low as $20,000. It depended on the trade and the season of the year.

Q. What efforts did Mr. Evans make to get a recommendation of anybody for the appointment of post-trader at Fort Sill?

A. He got up a petition and the officers signed it.

Q. Do you know that fact personally?

A. Yes, sir.

Q. After Mr. Evans was appointed, state whether your firm paid any money to anybody on account of the appointment.

A. Yes, sir; we paid money.

Q. To whom?

A. It was transmitted to Caleb Marsh.

Q. How much was paid him by the year?

A. At first $12,000.

Q. How was it payable?

A. I do not remember now; but I think six months in advance. It may have been three months in advance. I do not remember now, but it was in advance; and I think it was quarterly in advance.

Q. State whether the money was regularly remitted to him, so far as you know.

A. It was remitted.

Q. State whether the amount was changed.

A. The amount was changed, I think in 1872, to $6,000.

Q. Who made the arrangement with Mr. Marsh to change the amount from $12,000 to $6,000?

A. I was present in New York when it was changed.

Q. Have you any data as to, or any recollection of, the time of the year, what season or month?

A. It was in the spring of 1872, I think.

Q. Can you tell us what month?

A. I cannot say what month.

Q. State whether about that time any publication had been made in any of the newspapers calling attention to the arrangement.

A. There was a publication prior to it in the New York papers.

Q. Did you ever call the attention of the Secretary of War to it yourself?

A. No, sir.

Q. Do you remember which New York paper contained the publication?

A. I do not remember. I was in New York at the time and read it myself. I think I saw it in the Tribune.

Q. After the amount was reduced from $12,000 to $6,000, state whether the $6,000 was paid regularly; and, if so, in what amounts and at what periods.

A. I think it was paid six months in advance, $3,000 at a time. That is my recollection.

Q. How long did you continue to pay that money?

A. We paid until the 15th of April, 1876. That is, I think the last payment was in October, and that ran to April, 1876.

Q. Have you a letter from Mr. Marsh with you?

A. No, sir.

Q. Who has possession of that letter?

A. Mr. CLYMER's committee has it.

Q. Did you leave the original with the committee?

A. I did. I gave my papers to them.

Q. State why this money was paid to Mr. Marsh regularly, $12,000 a year and subsequently $6,000.

A. When Mr. Evans returned to Fort Sill he told me——

Mr. Manager McMAHON. You need not give the conversation, but the reason why you as a member of the firm forwarded the money.

A. For the position.

Q. To retain the position?

A. Yes; that was my understanding.

Q. Did the Secretary of War ever address you any communication in regard to this matter?

A. Never.

Q. Did he address any communication to the firm with your knowledge? Have you any knowledge of any such communication?

A. No, sir.

Q. State, in this connection, what information you have of Mr. Evans, where he is, whether he is coming.

Mr. CARPENTER. What is the object of that?

Mr. Manager McMAHON. Simply for information. I have not any object in it. I will not ask it if you do not want it.

The PRESIDENT *pro tempore*. Do counsel object?

Mr. CARPENTER. I do not object; but I do not see what the manager wants to prove about the whereabouts of a man who is not here.

Mr. Manager McMAHON. I want to see if he is coming.

The WITNESS. He is *en route*.

Q. (By Mr. Manager McMAHON.) From what point did you hear of him last?

A. He left Fort Sill to come by the way of Fort Reno, and the freshets have been terrible there; he certainly must be *en route*.

Q. How long will it take him to get here now?

A. I cannot say where he is. If I knew where he was I could tell.

Q. How long does it take to come from Fort Sill here if the road is entirely open?

A. About seven days from Fort Sill.

Q. Is there railroad communication to Fort Reno?

A. No, sir.

Q. Is he impeded by floods beyond Reno?

A. Yes, sir. I think he is between Fort Sill and the railroad by the way of Reno.

Q. What day did he leave Fort Sill?

A. I do not know.

Q. Have you any telegram from him?

A. No, sir; I have not. I have a telegram from the book-keeper that he left several days ago.

Cross-examined by Mr. CARPENTER:

Q. Do you know Mr. E. H. Durfee?

A. Yes, sir; I think I know him.

Q. Was he formerly a partner of Mr. Evans?

A. No; I do not think he ever was.

Q. Was he interested with him in business?

A. No; he never was.

Q. They never carried on business together?

A. I think not.

Q. Was it contemplated at any time to your knowledge by Mr. Evans to form a partnership with Mr. Durfee?

A. I think it was spoken of at one time.

Q. For the purpose of carrying on business at Fort Sill?

A. I think so, for a short time. That is my remembrance.

Q. You say that you paid that money, you supposed, to keep your place; did you not know that Mr. Evans had made a contract in writing with Mr. Marsh upon that subject?

A. I read the contract; yes, sir.

Q. Then you paid the money under that contract?

A. Yes, sir.

Q. That is all that you know about it?

A. That is all I know about it.

By Mr. Manager McMAHON:

Q. Mr. Fisher, have you any knowledge to whom communications would be addressed by the firm when they desired favors or made applications to the Secretary of War; through whom would the applications be sent?

A. I think on several occasions we wrote directly to Mr. Marsh.

By Mr. CARPENTER:

Q. Do you know that fact of your own knowledge?

A. I do not know that I do know that personally.

Q. Then I would not answer it.

A. That is my impression; that is all. I do not know it personally.

By Mr. Manager McMAHON:

Q. What other post-traders were there at Fort Sill at the time of the passage of the law of July, 1870, and at the time when the order came to remove all other post-traders from the post?

A. Mr. Durfee and John C. Dent.

Q. Two different establishments besides your own?

A. Yes, sir.

Mr. CARPENTER. Before calling another witness I wish to call the managers' attention to the fact, as it appears by the RECORD, that a letter from Mr. Marsh, which was an exhibit in his testimony before the House committee, is not printed in the RECORD. I suppose that is considered in evidence.

Mr. Manager McMAHON. Which letter?

Mr. CARPENTER. The letter printed in the House committee's report. It is referred to in the testimony, and is really a part of it; but does not appear in the RECORD.

Mr. Manager HOAR. It is the letter which he drew up at Tomlinson's request.

Mr. Manager McMAHON. We have no objection to its going in, but it was really not a part of his testimony.

Mr. CARPENTER. Marsh refers to it in his testimony.

Mr. Manager McMAHON. We agree that the printed copy in the report may be printed in the RECORD as a part of these proceedings.

The PRESIDENT *pro tempore*. The letter will be now read, if there be no objection.

Mr. Manager McMAHON. We do not care about its being read.

The PRESIDENT *pro tempore*. If the parties agree to that understanding, the letter will not be read.

Mr. CARPENTER. Let us have the letter read, because that is as important as anything. The Secretary will please read the printed letter from the House committee's report.

The Chief Clerk read as follows:

NEW YORK, *February* 25, 1876.

To the honorable the Committee on Expenditures in the War Department:

DEAR SIRS: I duly received your telegram of March 21 summoning me to appear before you, and answered that I would do so; but my wife has since become so ill as to make it almost impossible for me to leave her for any time, and I to-day send you a telegram to this effect, and will also give a statement of my connection with the post-tradership at Fort Sill which will, I trust, avoid the necessity of my leaving home. I will, however, come as soon as I can, or will be happy to see any one or all of the committee at my house in this city.

At the time I applied for the position of post-trader at Fort Sill I presumed that I could furnish recommendations that would secure me the appointment which was afterward promised me. After this I saw Mr. Evans in Washington, and made an arrangement with him in consequence of which I withdrew in his favor and he received the appointment.

This arrangement was made without the advice or consent of the Secretary of War, neither did he have any knowledge of such an arrangement from me, or any one else, so far as I know, nor was he interested in any such arrangement or the fruits of any arrangement between us.

There never has been, nor is there now, any contract, agreement, or arrangement between the Secretary of War and myself in regard to these matters.

I am, very sincerely, your obedient servant,

C. P. MARSH.

Mr. Manager McMAHON. The understanding is, of course, that that comes in as the other proceedings before the House committee, not as evidence of the truth of the statements therein made.

Mr. CARPENTER. It goes in exactly as Marsh's testimony which you have offered. I do not know how to give it in as evidence without having to give it in as evidence after it gets in.

Mr. Manager McMAHON. You want with that the letter that inclosed it also.

Mr. CARPENTER. No, I think not.

Mr. Manager McMAHON. O, yes; we want the whole of it. Mr. President, we offer to the Senate the letter in which this letter was inclosed, a short note dated February 28, 1876.

Mr. BLACK. To whom is this addressed? There is no name.

Mr. Manager McMAHON. It is addressed to the committee.

Mr. CARPENTER. We object to it.

Mr. Manager McMAHON. I will state to the Senate in brief the particular question that is now before it, as probably most of the Senate was not attending when the letter was read. The counsel upon the other side offered and had read a letter written by Caleb P. Marsh to the Committee on Expenditures in the War Department of the date of the 25th of February, 1876, to the reading of which we made no objection; but we desire to connect with it, which is Exhibit B, Exhibit C, dated Washington, February 28, 1876, being the letter written by him which inclosed the letter which the gentlemen have just had read. Of course the letter itself to the committee is not complete without reading the letter which inclosed it. They are one communication.

Mr. CARPENTER. The only objection to it that I can conceive of is that this was written by a third person, not by General Belknap, and therefore is not evidence against him.

Mr. Manager McMAHON. You offered Marsh's letter, and this is a part really of Marsh's letter. The fact that they happen to be upon separate pieces of paper makes no difference. They were both under one envelope and are a part of one communication.

Mr. CARPENTER. We will take the ruling of the Senate upon that point.

The PRESIDENT *pro tempore*. Shall this letter be admitted?

The question was decided in the affirmative.

Mr. Manager McMAHON. Read the letter, Mr. Secretary.

The Chief Clerk read as follows:

ARLINGTON HOTEL, WASHINGTON, *February* 28, 1876.

DEAR SIRS: I herewith inclose copy of letter which I wrote you from New York; but not having mailed it when I received your subpœna, concluded not to send it. This morning, however, I have thought best to send it to you, in the hope that it may tend to shorten the time of my examination.

Very respectfully, your obedient servant,

C. P. MARSH.

P. S.—I will bring the contract you inquire for.

The COMMITTEE ON EXPENDITURES IN THE WAR DEPARTMENT, *Capitol*.

Mr. Manager McMAHON. We now desire to recall Mr. CLYMER on one point, and have sent for him, requesting his attendance. He is in the city.

The PRESIDENT *pro tempore*. Have you any other witnesses?

Mr. Manager McMAHON. We have no one except Mr. Evans; and we have a proposition to make to the counsel to which they may possibly accede. The proposition we have to make to counsel on the other side, in view of the absence of Mr. Evans, is this: He has been thoroughly and fully examined, as the documents I hold in my hand indicate, both by the Committee on Expenditures in the War Department and by the Judiciary Committee of the House, but not by the board of managers. The testimony has been reduced to writing, and we propose now to furnish to the counsel upon the other side this testimony, with the understanding that they may take any competent portion of it, take any specific questions and answers, and submit them as the testimony of Mr. Evans; with the understanding also that we may offer as well any competent portions relevant to our case. We do not ask them to decide immediately; they can have the proper time to look at it.

We make this proposition because the gentlemen have insisted upon a continuance to a remote period. All periods are very remote which protract this trial, just now, beyond a day. They ask it in good faith, no doubt, with the idea that Mr. Evans is an important witness for them. While they undoubtedly have that belief, and express it honestly and sincerely, we can as honestly and sincerely say it is impossible for the defendant to get any testimony which can be of value to the defense.

Mr. BLACK. You mean it is impossible for us to introduce any testimony which will be of value?

Mr. Manager McMAHON. Yes, from Mr. Evans, because his testimony is of that negative character that would exclude the idea of its being of value to you.

The PRESIDENT *pro tempore*. Mr. CLYMER is in the Chamber.

Hon. HIESTER CLYMER recalled and examined.

By Mr. Manager McMAHON:

Question. Mr. CLYMER, how much of Mr. Marsh's testimony before your committee was in his own handwriting?

Answer. If you will give me a copy of the printed RECORD, I can tell.

Q. [Presenting a copy of to-day's RECORD.] Just state where it began and where it closed.

Mr. CARPENTER. What is the object of that?

Mr. Manager McMAHON. The witness has the written statement, and I only want to show as a matter of record where the written statement closes and where the committee began to cross-examine him.

The WITNESS. It will be observed in the printed RECORD, which is an exact copy of the manuscript before me, that there is one question asked, a general question, covering, as I presumed when I framed it, the entire case, so as to prevent the necessity of repeated interrogatories. To that main question Mr. Marsh submitted on the morning after the cross-examination a paper in writing which I hold in my hand.

Q. (By Mr. Manager McMAHON.) That is, he brought it back next morning?

A. He brought it back the next morning, and read it in answer to this leading interrogatory.

Q. How far down did his written answer go?

A. His written answer goes until the next question is asked in the print.

Q. Read the question now, so that the RECORD may show it.

A. Do you mean the first question?

Q. The first question after the written part.

A. The first question after the written reply is this:

Question. State how the payments were made to the Secretary of War subsequent to the funeral of his then wife, which you attended in Washington in December, 1870; whether in cash, by check, draft, certificate of deposit, bonds, or by express, or otherwise.

Q. After that in whose handwriting is the testimony that was submitted?

A. In my own.

Q. Upon question and answer?

A. On question and answer.

Cross-examined by Mr. CARPENTER:

Q. Mr. CLYMER, how long was your committee engaged in investigating the affairs of the War Department?

A. I think the committees were announced prior to the recess in December, the 19th or 20th; I do not have a precise recollection of the dates. I returned here early in January. I can state when the committee was organized from the records of the committee. [Examining papers.] The Committee on Expenditures in the War Department met as a committee first, as I perceive by the minutes, on February 2, 1876.

Q. This last February?

A. Last February. I will state further that during the month of January, without the committee having been organized at all, as its chairman numberless things were sent to me with regard to the War Department which I chose to look at myself, without troubling the committee; but the 2d of February was the date when the committee organized and when we fixed our days of meeting.

Q. From that time on how much of the time has been devoted to the investigation of the affairs of the War Department?

A. I see by the minutes that we seem to have held our meetings regularly from time to time. I can scarcely answer your question definitely as to how much time we occupied.

Q. Of course not exactly, but you can approximate it?

A. I do not know whether I understand precisely the scope of the question.

Q. How long has the committee been engaged in investigating the affairs of the War Department?

Mr. Manager McMAHON. I only want to understand how far this is to go. If any inference is to be drawn from any investigation held there that there is nothing else in this matter but what has been charged, we shall claim to put in the testimony which has been taken, which we shall certainly claim throws a good deal of light on other transactions and on this. We have carefully excluded them up to this point.

Mr. CARPENTER. I am very much surprised to hear an honorable manager charged with conducting this prosecution against us state that he has a large amount of testimony bearing upon this transaction which he has withheld.

Mr. Manager McMAHON. I say it would throw light on this transaction—testimony as to other post-traderships.

Mr. CARPENTER. In other words, the object of the manager is to leave this transaction as much in the dark as can be done possibly.

Mr. Manager McMAHON. No, I think the reverse.

The PRESIDENT *pro tempore*. Does the counsel yield to the manager?

Mr. CARPENTER. The statement I understand is that the manager has a large amount of testimony which would throw light on this transaction, and he has withheld it up to this time. Withholding what would throw light seems to me to be throwing darkness, or leaving darkness upon the transaction. My logic may be defective, but that is the way I reason. The question put at present, I take it, is proper, and the managers cannot object, or at least cannot succeed in sustaining an objection to this question, for fear I may subsequently put a question which they may want to object to.

Mr. Manager McMAHON. The logic and the illustration of the gentleman are both at fault. We might hold a candle in this room and it certainly might throw some light; but we should not want that candle to enable us to see what was before us, though it would throw light. The logic is bad. We have undertaken to try this case on behalf of the House of Representatives as lawyers, confining ourselves to the issue, and when we have proof which we shall claim in the close of this case is not susceptible even of being broken down, we do not care to raise side issues by showing that there were other posts at which doubtful transactions took place. The gentleman, however,

proposes to go so far with this witness as to say, "Have you been investigating the War Department?" from which he proposes to draw the inference that he found nothing else wrong. We do not propose any such inference to be drawn under any circumstances whatever.

Mr. CARPENTER. Perhaps I may shorten the objection of the manager. The defendant proposes to the board of managers to enter into an investigation of every post-tradership in the United States; and if the manager means here to have the court understand that there is any testimony in relation to any transaction as to another post-tradership unfavorable in any way to this defendant, we demand that he shall either retract the statement or produce the proof.

Mr. Manager McMAHON. I have simply this to say in reply, "Sufficient unto the day is the evil thereof." I have no doubt the gentlemen on the other side would like to turn to some other post-tradership besides Fort Sill; but we propose to adhere to Fort Sill. Therefore we do not propose to have this controversy in any manner diverted to other post-traderships where the testimony may not of itself be as conclusive in the particular instance, but where the proof in regard to that instance might throw a ray of light on this particular transaction, if this particular transaction needs any ray of light.

Mr. CARPENTER. The honorable manager has done precisely in this matter what Mr. Burke did in the trial of Warren Hastings, for which the House of Commons censured him. They had confined their articles to such charges as they wished to present against Governor Hastings, and an oral intimation from Mr. Burke of other crimes committed by Warren Hastings was rebuked in the House of Commons.

Mr. Manager McMAHON. When the gentleman proceeds into the House of Commons of the United States and I have their rebuke, I shall be happy to have a parallel between so distinguished a man as Edmund Burke and myself. In the mean time I simply remain the humble individual that I am. In answer I assert that I have a right, when the gentleman undertakes here to ask a part of the truth out of this witness from which he wants to draw an inference, "Have you been spending your time in investigating the War Department," to say that we do not go into that; and you have no right to say that we have found nothing more because we would have put it in evidence if we had found it. That is my warning to the gentleman. I say that testimony has been submitted to us from which we have the right and this court would have the right to draw a conclusion, but it would have involved side issues. I say because it does involve side issues I object to it; and if in that particular I may have fallen into the fault of that distinguished gentleman, if I could imitate some of his great virtues and possess some of his shining qualities, I should die entirely satisfied.

The PRESIDENT *pro tempore*. The managers object to the interrogatory proposed. Shall the interrogatory be admitted?

The question was decided in the affirmative.

Q. (By Mr. CARPENTER.) How long has the committee been engaged in investigating the affairs of the War Department?

A. We entered actively upon our investigation, as I have stated before, about the 2d of February, and we have conducted our investigations with reference to different branches of the same subject up to within the last week or two.

Q. Since this trial commenced?

A. Yes, sir.

Re-examined by Mr. Manager McMAHON:

Q. Had your committee taken any other testimony except Mr. Marsh's at the time that the House ordered the impeachment of Mr. Belknap and notified the Senate to that effect?

Mr. CARPENTER. What is the materiality of that?

Mr. Manager McMAHON. To rebut your presumption. If your question was competent, mine is.

Mr. CARPENTER. We object to the question.

Mr. Manager McMAHON. We must insist upon the question being answered, if the Senate so rule.

Mr. CARPENTER. Mr. President, I should like to say one word. In the first place, it would be utterly impossible for this witness to answer such a question. The House of Representatives has various means of obtaining information. The method of examination conducted by a committee is only one of many sources of information legitimately open to a legislative body.

Several SENATORS. Let the question be read.

The question was read by the reporter.

Mr. CARPENTER. What is the object of that question?

Mr. Manager McMAHON. I will answer by asking what was the object of asking your question of Mr. CLYMER awhile ago?

Mr. CARPENTER. That is past. We have nothing to do with that now.

Mr. Manager McMAHON. My object is the same as yours, to rebut the inference you propose to draw from that.

Mr. CARPENTER. What inference did I propose to draw?

Mr. Manager McMAHON. I supposed you proposed to draw the inference that this committee had been fishing and found nothing but Fort Sill; and therefore that everything else was right. My object is to show that when the House framed the impeachment Fort Sill was all that was up, and the transaction at Fort Sill was ordered to be impeached, and that this court have nothing to do with anything else and can draw no inference from anything else upon the principle that "sufficient unto the day is the evil thereof."

Mr. CARPENTER. That principle is very well established; but in the very articles of impeachment which the House of Representatives filed they have reserved the right to file additional articles. They have, as Mr. CLYMER says, searched in that Department from the 2d of February to since this trial commenced, and they have the right reserved to file additional articles. It seems to me the manager has made out a pretty good case against his own proposition. Having the right to reserve new articles and having searched for months looking through the Department from one end to the other, it is a fair presumption they have not found anything else.

Mr. Manager McMAHON. Will the honorable counsel allow me to ask him a question before he sits down?

Mr. CARPENTER. I will.

Mr. Manager McMAHON. I ask him if he is willing to let that question go to the testimony of the witness and the testimony that has been produced before his committee, and if he will accept the challenge whether nothing else has been found in the War Department, whether no other post-tradership have been found out. I am willing to take the whole testimony on that question.

Mr. CARPENTER. The proposition which we made to the board of managers we repeat. We consent to your opening in this court an investigation of every post-tradership in the United States for the purpose of showing anything against General Belknap's character or honor.

Mr. Manager McMAHON. I want to ask the honorable gentleman another question. He puts the question now to the witness about the examinations made by his committee. His proposition, therefore, is to draw from this matter the fact that there is nothing else because we have presented no additional articles. The fair way to settle that is to ask Mr. CLYMER, "You have been on the search; you have taken testimony. What is that testimony? Produce it here in court," if any inference is to be drawn from something that this Committee on Expenditures in the War Department did subsequently to the investigation of Fort Sill, and "What did it develop?" How are you going to do it, except by letting Mr. CLYMER state or produce the written testimony in regard to all the post-traderships, north and south. I understand very well the general idea that the gentleman would have liked us to have brought in additional articles and then had a continuance and a new fight on that, and so run along.

Mr. CARPENTER. We shall not ask any continuance. If you bring in new articles, we shall get ready as fast as you can and put it into this case.

Mr. Manager McMAHON. We are simply prepared to try these articles. I say to the gentleman if he will get rid of the Fort Sill matter and his client be disqualified from holding office on that transaction, it is not worth while to disqualify him because of some other transaction, for all the purposes of public justice will be entirely subserved.

The PRESIDENT *pro tempore*. The question will be read by the reporter.

The question was read, as follows:

Q. Had your committee taken any other testimony except Mr. Marsh's at the time that the House ordered the impeachment of Mr. Belknap and notified the Senate to that effect?

The PRESIDENT *pro tempore*. Shall this interrogatory be admitted?

The question being put, there were on a division—ayes 11, noes 16; no quorum voting.

Mr. Manager McMAHON. Rather than lose time, we will waive the question.

Q. (By Mr. CARPENTER.) I should like to ask you, Mr. CLYMER, whether after you got through with the testimony on which the report was made to the House, you know that the Judiciary Committee of the House were of opinion that it did not amount to anything; that they could not impeach upon that; and whether Mr. Marsh was not sent for and brought back here and re-examined?

A. I do not know that fact.

Mr. Manager McMAHON. It seems to me that is putting just exactly what was ruled out.

The PRESIDENT *pro tempore*. If objection is made the Chair sustains it. Are counsel through with the witness?

Mr. CARPENTER. Yes, sir.

The PRESIDENT *pro tempore*, (to Mr. Manager McMAHON.) Call your next witness.

Mr. Manager McMAHON. We desire to state to the Senate that we are through with our case in chief for the United States with this exception: that if Mr. Evans arrives in the usual course of the trial of this case, we desire to put him on the stand, or if he is put upon the stand by the defense we desire permission to put to him such questions as would be competent and proper if he were examined by us in chief; but we do not ask the delay of this case one hour for the arrival of Mr. Evans. On the contrary, we ask that it proceed.

The PRESIDENT *pro tempore*. Is there objection to this privilege of examination being reserved?

Mr. CARPENTER. We shall object to it, of course.

Mr. FRELINGHUYSEN. Mr. President, I do not think it is necessary to decide that question now.

The PRESIDENT *pro tempore*. The managers have raised the question.

Mr. FRELINGHUYSEN. It was very proper for the managers to make the statement, and when the question arises the court will determine it.

The PRESIDENT *pro tempore*. The defense will proceed, the case being closed on the part of the managers.

Major-General JOHN POPE sworn and examined.

By Mr. CARPENTER:

Question. Is Fort Sill in your department?

Answer. Fort Sill is in my department.

Q. Do you know anything about permits having been applied for by the traders at Fort Sill to sell liquor?

A. There have been permits applied for from Fort Sill as well as from other posts, in the ordinary course of official business.

Q. State what is the ordinary course of such official business.

A. The applications are usually made by the officers at the post or by the soldiers at the post. They are sent through the proper post commander, and by him transmitted to the department commander, who forwards them to the War Department through the proper military channel for the permit to be granted or refused.

Q. Do you know any instance, while General Belknap was Secretary of War, in which he overruled recommendations of the officers through whose hands the application had come?

Mr. Manager McMAHON. It seems to me, Mr. President, that the record ought to settle that question. Everything goes officially through the Departments and the action of the Secretary of War upon it, favorable or unfavorable, ought to be proved by the record and not by the mere recollection of a witness who has had so many other transactions.

The PRESIDENT *pro tempore*. The Chair will submit the question to the Senate. Shall this interrogatory be admitted?

The question was decided in the negative.

The PRESIDENT *pro tempore*. The objection is sustained.

Q. (By Mr. CARPENTER.) How long have you been in the department that you are in at present?

A. I have commanded the Department of the Missouri since 1870.

Q. And has Fort Sill been in that department all that time?

A. No, sir.

Q. What part of the time has it been?

A. It was in the department from the time I assumed command of it in 1870 up to 1871, in the autumn. From that time to 1875 it was out of the department, and was retransferred in 1875 to the department.

Q. Do you recollect any applications in regard to licenses for selling liquor at Fort Sill while General Belknap was Secretary of War?

A. I remember an application, simply because I had occasion to look it up recently, that the officers at Fort Sill——

Mr. Manager McMAHON. We object to this. The witness himself discloses the fact that he remembers it because he has recently seen the official documents. Now, I say that the official documents must be produced.

A. The official documents are in my own office.

Mr. Manager McMAHON. But we want the official documents. That is the point we make. We want particularly to see the dates.

The PRESIDENT *pro tempore*. The Chair sustains the objection under the ruling of the Senate.

Mr. CARPENTER. I should like to know exactly what is sustained and what is not. The witness was in the midst of an answer, and the manager makes an objection which I do not comprehend, and the court sustains the objection. I want to know how much the objection covers. Does the Chair rule that we cannot prove from this witness that he in the discharge of his duty has passed upon these applications coming from Fort Sill?

The PRESIDENT *pro tempore*. The witness stated that he refreshed himself from the record.

Mr. CARPENTER. Very well; if he has refreshed himself he can swear to it.

The PRESIDENT *pro tempore*. The manager took exception that the record should be produced, and on the prior ruling of the Senate the Chair ruled that the objection was well taken. If the counsel prefers, the Chair will submit the question to the Senate.

Q. (By Mr. CARPENTER.) Do you know anything of the extension of the reservation about Fort Sill, and when it took place?

A. Fort Sill was a post established at the time I took command of the department. My predecessor in command, General Schofield, was written to from the War Department, I think, directing him to take some steps to have the reservation extended and properly surveyed——

Mr. Manager McMAHON. I am obliged again to say that all these are matters of record. The gentleman has a client who understands all about getting copies of them, who is thoroughly informed, and we must certainly object to having oral testimony as to what is matter of record.

The PRESIDENT *pro tempore*. The managers object to this interrogatory.

Mr. MERRIMON. Let it be reported.

The PRESIDENT *pro tempore*. The question will be read.

Mr. Manager McMAHON. It was not so much the particular question as the answer which he was going on to give that we objected.

The question and answer as far as given were read by the Official Reporter, as follows:

Q. Do you know anything of the extension of the reservation about Fort Sill and when it took place?

A. Fort Sill was a post established at the time I took command of the department. My predecessor in command, General Schofield, had been written to from the War Department, I think, directing him to take some steps to have the reservation extended and properly surveyed——

Mr. Manager LAPHAM. I desire to make a suggestion here by way of objection to this whole range of inquiry. This witness has stated that from 1871 to 1875 Fort Sill was not in his department; he had no jurisdiction over it. Now all the complaints made of the conduct of Evans as introduced in the proof in this case were during that period of time, when the witness had nothing whatever to do with Fort Sill, no knowledge in respect to it, no jurisdiction over it.

Mr. CARPENTER. Still he might know something about it if he had no jurisdiction over it.

Mr. Manager McMAHON. Still he ought not to be asked what he knows from the record. The record ought to speak on these questions.

Mr. CARPENTER. I wish to say one word to the court at this point. I stated to the Senate the other day that we could of course call witnesses, but that our case could not be put in properly or orderly without first having the testimony of Mr. Evans. The testimony we now want is in reference to testimony which we shall expect to procure from Mr. Evans; but he is not here, and of course it does not now appear what that testimony will be. It seems to me that in a case of this importance, where the Senate is driven with other work so that no time is lost, this case ought to be postponed for two or three days, until Mr. Evans can get here. But if that cannot be done, and we are to be precluded from giving the testimony which Mr. Evans would render proper and competent, we are in a pretty sad condition in this case.

The PRESIDENT *pro tempore*. The Chair will submit the question. Shall the interrogatory be admitted which has just been read?

Mr. Manager HOAR. Mr. President, the objection is not to the interrogatory itself, but to the answer stating the contents of a certain letter.

The PRESIDENT *pro tempore*. The Chair does not know what the counsel may put, and the objection is confined to the question. The reporter will read it if the manager will allow.

The Official Reporter read as follows:

Q. Do you know anything of the extension of the reservation about Fort Sill and when it took place?

A. Fort Sill was a post established at the time I took command of the department. My predecessor in command, General Schofield, had been written to from the War Department, I think, directing him to take some steps to have the reservation extended and properly surveyed——

Mr. Manager HOAR. At that point the managers interposed the objection that that correspondence, being in writing, cannot be testified to by the witness.

The PRESIDENT *pro tempore*. Shall this line of interrogatory be proceeded with? The Chair will submit the question to the Senate.

The question was decided in the negative.

The PRESIDENT *pro tempore*. The objection is sustained.

Mr. CARPENTER. I understand that the President has not only overruled this question, but excluded this line of questions.

The PRESIDENT *pro tempore*. That is the vote of the Senate.

Mr. Manager McMAHON. I think when the question arises the court can decide it of course.

Q. (By Mr. CARPENTER.) General Pope, what was the practice prior to the war in regard to sutlers living at their posts?

Mr. Manager McMAHON. We object to that question.

The PRESIDENT *pro tempore*. The managers object on the same ground. The Chair sustains the objection.

Mr. SHERMAN. That is not the same nature of question.

Mr. Manager McMAHON. Our objection is on the ground that it is entirely immaterial.

Mr. CARPENTER. Prior to March 25, 1872; I will locate the question in that way, then.

Mr. Manager McMAHON. We do not offer any objection to that.

Q. (By Mr. CARPENTER.) Then answer the question, General. I ask you what was the practice in the Army, so far as you know, in regard to traders or sutlers residing at their posts prior to the order made by General Belknap which required them to reside at their posts?

A. I do not know that I can tell you what the practice was. My general impression is that the sutlers lived, as a rule, at the posts.

Q. Do you not know of many instances where they did not?

A. I have known of such instances.

Q. Was there any regulation, to your knowledge, which required them to reside at their posts prior to the order made by General Belknap?

Mr. Manager McMAHON. That is the question you prevented me from asking the other day. The statutes and regulations must speak for themselves, as you said.

Mr. CARPENTER. How can a regulation speak for itself if it never existed?

Mr. Manager McMAHON. I beg your pardon; it can be found in the books issued and in existence at that time.

Mr. CARPENTER. If it never existed it would be very difficult

to find it in a book. Mr. President, I do not know how closely the managers——

Mr. Manager McMAHON. We withdraw the objection rather than consume time.

Mr. CARPENTER. I trust hereafter that when the managers think a question is perfectly proper they will not make more than two or three arguments before they withdraw their objection.

Mr. Manager McMAHON. When we think a question is so clearly immaterial that an objection will induce counsel to withdraw it at once, we object. We have been in the same position ourselves.

Mr. CARPENTER. We do not put immaterial questions. (To the witness.) You say you know of several instances in which the sutler did not reside at the post.

A. I can recall one now. I do not know that I can recall more.

Q. (By Mr. CARPENTER.) I then ask you if you know of any regulation prior to the order issued by General Belknap on the 25th of March, 1872, which required sutlers or post-traders to reside at their posts?

A. I do not.

Mr. CARPENTER. It will be impossible for us to proceed any further with General Pope until Mr. Evans arrives.

The PRESIDENT *pro tempore*. Is the counsel through with the witness?

Mr. CARPENTER. General Pope is very anxious to get away from here and get back to his post, and we are willing to accommodate in every way to reach that result; but if the managers are to pursue the present captious course of objection and require these documents to be produced, they have got to be looked up in the Department, and General Pope will have to stay and swear in view of them; and after Mr. Evans arrives we shall then want him also in regard to two or three points that we cannot inquire of now.

Mr. Manager HOAR. Will the learned counsel state what is the fact he wishes to prove by General Pope?

Mr. CARPENTER. I cannot fully, because I do not know myself until we have the testimony of Mr. Evans. What I have spoken of now are these very matters that were covered by the questions that you objected we must get the records here to show. General Pope knows just as much about the matter without looking through forty pages as he will after he does that; but still the Senate has sustained the objection; and if you insist on it General Pope must remain. That is all.

Mr. Manager McMAHON. We certainly must try the case according to the rules of evidence. We want to see the records themselves.

Q. (By Mr. CARPENTER.) I ask you, General Pope, how long have you known General Belknap?

A. Since about 1870.

Q. You were in the Army all the time that Belknap was Secretary of War, were you not?

A. Yes, sir.

Q. Having constant official relations with him?

A. Yes, sir.

Q. What, in your opinion, has been his general conduct as Secretary of War? I mean the character of his administration of that office?

A. So far as I know, so far as all the official relations of the War Department with the commands which I exercised were concerned, I have no reason to think that they were otherwise than honorable, upright, and attentive to all the duties of the office.

Mr. CARPENTER. That is all at present.

Mr. Manager McMAHON. That is all, General Pope.

Mr. CARPENTER. I ask now to have this part of a letter from General Sheridan read which I send to the desk.

The Chief Clerk read as follows:

CHICAGO, *March* 29, 1872.

MY DEAR GENERAL BELKNAP: I have examined the circular on the subject of post-traders and think very well of it. So far as the troops are concerned it is especially fair and just.

It is possible that post-traders may give you some annoyance by appeals arising from the action of councils of administration, but probably more from the action of commanding officers. There are so many men in this world whose hair is always lying in the wrong direction, and who when invested with the slightest authority must make it felt, that I fear the post-traders will be sending you many appeals.

Mr. CARPENTER. This is part of a letter of General Sheridan admitted by stipulation without the rest of the letter, written three days after the circular of the 25th of March was issued.

Mr. Manager McMAHON. All right.

Mr. CARPENTER. Now I call attention—it need not be rewritten or copied, of course—to the stipulation on page 158 of the IMPEACHMENT RECORD, of three-points of fact admitted.

Mr. Manager McMAHON. Section 2 is not competent, and to that we have reserved the objection. That is:

II. That in regard to all the applications made for leave to sell liquors at the military posts the matter was referred by the Secretary of War to him, and by him investigated and reported on, and his report in all cases was adopted by the Secretary of War.

On this we make the point that the record must speak for itself, which is the question already made and settled; and we put in the objection now to that particular matter.

ROBERT MACFEELEY sworn and examined.

By Mr. CARPENTER:

Question. How long have you been in the Army?

Answer. I have been in the Army since 1850.

Q. In what parts of the country have you been stationed?

A. I have been on the northern frontier at Fort Brady two years, from 1850 to 1852; I have been stationed in Oregon and California from 1852 to 1860. Since that time and during the war I served principally in the Southwest, in Kentucky, Tennessee, and Mississippi.

Q. Prior to the 25th of March, 1872, was there, to your knowledge, any regulation in the Army requiring sutlers or post-traders to reside at their posts?

A. No, sir; there was not.

Q. That is the first order ever made on the subject, so far as you know?

A. So far as I know.

Q. What now do you say as to the fact of sutlers prior to that order, years ago, residing elsewhere than at their posts?

A. As far as I have any knowledge, the sutlers were not required to reside at the posts.

Q. Was it not also a fact that they frequently did not? The question is whether in different instances they did, in fact, reside away from their posts?

A. They did in one instance that I know of certainly.

Q. Where was that?

A. It was at Fort Brady.

Q. Who was the sutler? Do you recollect?

A. Mr. McKnight, of Detroit; his business was conducted by his clerk during the two years I was there.

Q. Do you not know of similar instances in California and Oregon?

A. I believe there were similar instances, but none at any other post that I was stationed at. At the posts where I was stationed in Oregon the sutler happened to reside at all those posts himself.

Q. Do you remember a firm by the name of Allen and somebody in San Francisco who were sutlers or traders at several different posts?

A. Yes, sir; Green, Allen & Co.

Q. They staid at San Francisco, did they not?

A. I believe they did.

Q. Where were their posts?

A. I am not positive, but I believe they had several posts.

Q. At different places?

A. At different places.

Mr. Manager JENKS. Do not give your suppositions, but only facts if you know them.

The WITNESS. I do not know the fact from my own knowledge, but merely from hearsay.

Q. (By Mr. CARPENTER.) What is your position at present in the Army?

A. I am Commissary-General of Subsistence.

Q. Does that bring you into frequent official relations with the Secretary of War?

A. It does.

Q. How long have you held that office?

A. I was appointed Commissary-General in the latter part of April, 1875, and took charge of the office and of the duties about the 10th of May, 1875.

Q. Now I will ask you the same question I have asked others: From what you know of General Belknap while Secretary of War, and from official intercourse with him, what do you say of the general manner in which he performed the duties of that office?

A. As far as I have any knowledge, the management was characterized by honesty and justice.

Cross-examined by Mr. Manager McMAHON:

Q. In answering my question speak only from your own personal knowledge. How many instances do you know in which the post-trader or sutler did not reside at the post at which he was stationed?

A. I only know one instance from my own knowledge.

Re-examined by Mr. CARPENTER:

Q. But there was no regulation requiring any of them to reside at the post?

A. None to my knowledge.

Q. They might have all lived somewhere else if they pleased?

A. Yes, sir.

General E. D. TOWNSEND recalled and examined.

By Mr. CARPENTER:

Question. On page 137 of the IMPEACHMENT RECORD counsel who opened this case for the prosecution referred to the fact that when General Grierson's letter was received it was sent, with a letter from Marsh to the Secretary of War applying for the post, up to the Secretary. Do you recollect the circumstance of that letter being sent?

Answer. If I had General Grierson's letter I might be able to recall it.

Mr. Manager McMAHON. I think you have all the original papers except one that you returned to us at our request.

The WITNESS. I left them with the stenographer to be placed in the RECORD.

[The papers were handed to the witness.]

The WITNESS. [Selecting the letter referred to.] General Grierson, in his letter of February 28, 1872, alludes to a transaction with a Mr. Marsh, of New York. In the indorsement upon that letter, in these words, "War Department, A. G. O., March 11, 1872; respectfully forwarded to the Sec'y of War with application of C. P. Marsh for tradership at Fort Sill; signed, E. D. Townsend, A. G.," I find the solution of the question. It is the habit in the Adjutant-General's Office, in submitting a paper to higher authority which reqnires action, to send with it, without any other instructions, such papers as may be referred to in that letter or may bear upon it. Such was the case in the present instance.

Q. (By Mr. CARPENTER.) The sending of Marsh's letter was your own act in the usual course of doing business?

A. Yes, sir.

Cross-examined by Mr. Manager McMAHON:

Q. Can you tell which letter of Mr. Marsh it was? August 16, 1870, was it not?

A. The indorsement designates it as "application of C. P. Marsh for tradership at Fort Sill." There is but one such application that I know of on file.

Q. As General Grierson called attention to the fact that Evans was paying money to Marsh, you sent up Marsh's application because that threw light upon that charge?

A. Merely because it was alluded to.

Q. That is the fact, is it not?

Mr. CARPENTER. One moment. We do not want the Adjutant-General of the Army to swear to the effect of this testimony. He says that in the usual course of business on the receipt of the Grierson letter he sent up Marsh's application. That is all there is of the fact.

Mr. Manager LAPHAM. We want to see what the business was.

Mr. Manager McMAHON. The gentleman has asked him whether he sent it up in the usual course of business. We propose simply to ask him in cross-examination, Did you not send it up with the Grierson letter because Grierson's letter charged that Evans was paying money to Marsh, and you sent up the Marsh application for the purpose of intimating that possibly there was a little bargain under the bush?

Mr. CARPENTER. Do you really propose to prove that by General Townsend?

Mr. Manager McMAHON. To try to.

Mr. CARPENTER. Go on and do it.

Mr. Manager McMAHON. Do you withdraw the objection?

Mr. CARPENTMR. Certainly I do.

Q. (By Mr. Manager McMAHON.) Did you not send up the application of Marsh with that letter of General Grierson because you found in Grierson's letter a charge that Evans was paying to Marsh $12,000 a year? Look at the Grierson letter and see.

A. There is such a charge in the letter; but that was not the specific reason which induced me to send the letter with it.

Q. What was it?

A. Because I always send letters which bear in any way upon the one which is to be submitted.

Q. How did that bear upon the one that was submitted except in the way I have indicated?

A. Mr. Marsh's name was mentioned in it.

Mr. CARPENTER. One moment. The two letters are here. They will settle the question.

Mr. Manager McMAHON. He is speaking about his own judgment in regard to the matter.

Mr. CARPENTER. He has stated what was his motive about it and there are the two letters. Now do the gentlemen propose to ask him how one bears on the other?

Mr. Manager McMAHON. We are satisfied. The argument makes itself. The gentleman is right; the question is withdrawn.

NELSON H. DAVIS sworn and examined.

By Mr. CARPENTER:

Question. Are you an officer of the Army?

Answer. Yes, sir.

Q. What position do you hold?

A. I am Inspector-General with the rank of colonel, United States Army.

Q. Did you ever know a post-trader by the name of E. H. Durfee?

A. I knew a firm of traders by the name of Durfee & Peck.

Q. E. H. Durfee was one of that firm. Where were they?

A. On the Missouri River.

Q. How many posts did they have?

A. Forts Rice, Stevenson, and Sully, I believe.

Q. Did they not also have Fort Buford?

A. I think not at the time I knew of them.

Q. Were you instructed by General Belknap as Secretary of War at any time to investigate into the standing and character of Durfee & Peck?

Mr. Manager McMAHON. We object, Mr. President. We want to know first whether that instruction was in writing or whether it was verbal.

Mr. CARPENTER. I ask the witness, Did you investigate it?

Mr. Manager McMAHON. I object to that. Colonel, before you go on, we want to know whether the order was in writing.

Mr. CARPENTER. I waive the order now, and ask did he investigate.

Mr. Manager McMAHON. We object to that.

Mr. CARPENTER. The question is whether he had at one time been directed by the Secretary of War to investigate into the standing as business men of Durfee & Peck.

Mr. Manager JENKS. I would ask the learned counsel what his object is in introducing this testimony?

Mr. CARPENTER. It has been insisted upon here that the fact that Mr. Evans was not appointed in the first place upon the recommendation of the officers of the Army was because General Belknap had some corrupt design of conferring it on Marsh.

Mr. EDMUNDS. Were they the predecessors of the trader at Fort Sill?

Mr. CARPENTER. Mr. Durfee was Evans's partner, and Mr. Evans informed the Secretary of War of that fact. The Secretary of War had his suspicion that Durfee & Peck or Durfee himself was not the proper man to be appointed, and we propose to show that he ordered this witness to proceed there and inquire into the matter; that he did inquire into it, not at that particular post, but as to these men, and it was in consequence of that that Mr. Evans, who, it was understood, would go into company with Durfee if he was appointed, was not at that time appointed. Afterward he did not form that partnership, and he was appointed without objection.

Mr. Manager McMAHON. Our objection is that it is all matter of record; but the counsel and the client do not seem to understand each other about this matter, and we cannot expect to understand it unless we see the record.

The PRESIDENT *pro tempore*. The managers have objected to this question. Shall it be admitted?

The question was decided in the affirmative.

Mr. CARPENTER. Mr. President, I want now to renew to the Senate the statement I have already made about the utter impossibility of putting in our testimony so as to give it any emphasis or force without having the testimony of Mr. Evans, and to ask this court to adjourn some reasonable time for Mr. Evans to reach here.

Mr. Manager McMAHON. Mr. President, we shall most undoubtedly resist any motion for a continuance. The line of examination that the managers had pointed out for themselves was that Mr. Evans should be called first; but Mr. Evans was not here, and we reconstructed our case and tried it in a different way; and I never yet knew a case which could not proceed until a particular witness had been examined, unless the witnesses who were to come after that man whose testimony was of a hypothetical character and to whom the facts, for example in a medical case or a matter of art, had to be submitted for their opinion; and of course no intelligent hypothetical case could be put until the facts had been put in evidence upon which the hypothetical question could be based.

Now, I think the counsel ought to state something about what they expect to prove by Mr. Evans in regard to this matter. Possibly we can agree to the proposition they may want. It cannot be something so mysterious and hidden but what it may be developed. We will not interfere with Mr. Evans in any shape or form. It is to be known to this court; why can it not be made known now as the basis of the application? There is entirely too much mystery about it.

Mr. EDMUNDS. I wish to ask the counsel the following question, which I send to the Chair, if, as I understand, he applies to postpone this case on account of the absence of Evans.

Mr. CONKLING. Before that question is put, as a matter of order, I want to understand the rule under which any Senator, in writing or otherwise, can interrogate counsel. We are trying to observe the rules, and I ask for the reading of Rule 18, governing impeachments.

The PRESIDENT *pro tempore*. The Senator from New York calls the attention of the Chair to the fact that the rule does not authorize the questioning of counsel, but of witnesses.

Mr. CONKLING. Then I object to it.

The PRESIDENT *pro tempore*. The rule will be read.

The Chief Clerk read as follows:

XVIII. If a Senator wishes a question to be put to a witness, or to offer a motion or order, (except a motion to adjourn,) it shall be reduced to writing and put by the presiding officer.

Mr. EDMUNDS. I ask the Chair to have that rule again read, and see whether it prohibits asking counsel a question. Perhaps I did not hear it quite.

The rule was again read.

Mr. CONKLING. Now, Mr. President, I raise as a point of order and ask the Chair to rule upon it, the question whether, apart from that rule, Senators may ask such questions as they choose, and if so, whether there is anything which requires them to be reduced to writing?

Mr. EDMUNDS. That is hypothetical. I ask the Chair to rule on my question.

Mr. CONKLING. I ask the Chair to rule on my point of order. I do not mean to object to the Senator from Vermont any more than any other Senator; but I want the rules observed that I may know what they are in common with the other members of the body.

Mr. EDMUNDS. So do I.

Mr. WHYTE. I ask the Chair to submit that question to the Senate.

The PRESIDENT *pro tempore*. The Chair will state that adminis-

tering the rule he would not feel authorized to permit a question to be put to the counsel or the managers, for the rule provides only for Senators to question witnesses, and not counsel or managers to be questioned by them. The Chair will however submit the question to the Senate whether Senators shall be permitted to put questions to the counsel or the managers.

Mr. EDMUNDS. Mr. President, I rise to a point of order. That is not the question I proposed. I wish the Chair to submit whether I shall be allowed to put that question in writing.

The PRESIDENT *pro tempore*. The Chair has ruled on the point of order raised by the Senator from New York.

Mr. CONKLING. What is the ruling of the Chair?

The PRESIDENT *pro tempore*. The Chair holds that according to the rule the question cannot be put.

Mr. EDMUNDS. From that I appeal.

The PRESIDENT *pro tempore*. The Senator from Vermont appeals from the decision of the Chair. Shall the decision of the Chair stand as the judgment of the Senate?

Mr. CONKLING. Is that debatable, Mr. President?

The PRESIDENT *pro tempore*. Not in a trial session.

Mr. HAMLIN. It is in order to have the rule read, is it not?

The PRESIDENT *pro tempore*. The Secretary will read the rule, and the Chair will put the question.

The Chief Clerk read Rule 18.

Mr. EDMUNDS. Now I ask the question to be read that I proposed to ask the counsel, so that the Senate may see whether it is in order or not.

The PRESIDENT *pro tempore*. The question will be read.

The Chief Clerk read as follows:

Are not the counsel bound by the rules of practice to state, or show by affidavit, what it is that it is expected that the absent witness will testify, in order that the court may know whether the evidence will be material?

The PRESIDENT *pro tempore*. The Chair will ask the Senator from New York to state his point of order.

Mr. CONKLING. We are proceeding under rules established for the government of the Senate when sitting in trials of impeachment. One of those rules prescribes the way and the instance in which members of the Senate may put questions, and the rule confines those questions to interrogatories addressed to witnesses. My point of order is that if, despite that rule, proceeding without the rule, members of the Senate may do this in writing, they may do it orally; in short, that the rule amounts to nothing unless it is held to cover the ground to which it applies; and, if it does, I submit that we ought to adhere to it, and that it excludes interrogatories, particularly I should say of this kind, being in the nature of argument addressed to the counsel on one side or the other.

The PRESIDENT *pro tempore*. The Senator from New York has stated the point of order, and the Chair simply holds that under the rule No. 18, and which is the only one bearing upon the subject and upon which he rules, the Chair sustains the point of order.

Mr. EDMUNDS. From that I appeal.

The PRESIDENT *pro tempore*. From that the Senator from Vermont appeals to the Senate.

Mr. EDMUNDS. I ask for the yeas and nays on the appeal.

The yeas and nays were ordered.

The PRESIDENT *pro tempore*. The question is, Shall the decision of the Chair stand as the judgment of the Senate?

The yeas and nays being taken, resulted—yeas 18, nays 21; as follows:

YEAS—Messrs. Bogy, Booth, Bruce, Conkling, Cooper, Cragin, Hamlin, Howe, Logan, McCreery, Merrimon, Mitchell, Oglesby, Paddock, Patterson, Randolph, Sherman, and West—18.

NAYS—Messrs. Caperton, Cockrell, Davis, Dawes, Dennis, Edmunds, Gordon, Hamilton, Harvey, Kelly, Kernan, Key, Maxey, Morrill,* Norwood, Robertson, Saulsbury, Wallace, Whyte, Withers, and Wright—21.

NOT VOTING—Messrs. Alcorn, Allison, Anthony, Barnum, Bayard, Boutwell, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Clayton, Conover, Dorsey, Eaton, Ferry, Frelinghuysen, Goldthwaite, Hitchcock, Ingalls, Johnston, Jones of Florida, Jones of Nevada, McDonald, McMillan, Morton, Ransom, Sargent, Sharon, Spencer, Stevenson, Thurman, Wadleigh, and Windom—33.

The PRESIDENT *pro tempore*. The decision of the Chair does not stand as the judgment of the Senate. The Senator from Vermont proposes a question to counsel, which will be read.

Mr. CONKLING. Is it now in order for me to ask a question of order of the Chair?

The PRESIDENT *pro tempore*. It is.

Mr. CONKLING. If it is, I want to inquire whether the questions we address hereafter to these gentlemen on both sides must be in writing. The rule does not apply to such a case; and I should like to know how to govern myself, for I do not want to be out of order.

The PRESIDENT *pro tempore*. As this does not come within the rule, in the judgment of the Chair, he would hold that there would be no rule governing it.

Mr. CONKLING. Then we can ask such a question orally.

Mr. EDMUNDS. That is a hypothetical decision of the Chair on which I shall want to be heard when I get a chance.

The PRESIDENT *pro tempore*. The inquiry of the Senator from Vermont will be reported.

The Chief Clerk read as follows:

Are not the counsel bound by the rules of practice to state, or show by affidavit, what it is that it is expected the absent witness will testify, in order that the court may know whether the evidence will be material?

Mr. OGLESBY. Mr. President, I ask the Chair to whom that interrogatory is addressed?

The PRESIDENT *pro tempore*. The Chair does not know except by the language.

Mr. EDMUNDS. When I sent it to the Chair I said that I wished to ask the counsel the question which I sent up in writing.

Mr. OGLESBY. I do not understand from that which counsel.

Mr. EDMUNDS. Counsel for the respondent. There are managers on one side and counsel on the other.

Mr. OGLESBY. But the managers are all counsel.

Mr. CARPENTER. Mr. President and Senators, I do not understand that we are bound by the rules of practice—by which I understand the rules of practice in the judicial courts in criminal cases—to state or show by affidavit what we expect to prove by our witnesses until we can have them called. If we were in default in this matter, if we had not subpœnaed this witness or done everything in our power to subpœna him, and were asking an indulgence of this court to give us an opportunity to summon the witness and get him here, having been in default ourselves, I think a court would compel us to say what we expected to prove by him as the terms and conditions on which they would grant us a favor. We are not asking a favor here—I use that language with no disrespect—we are demanding a right. The Constitution says we shall have our witnesses; we shall have compulsory process to bring them. We have done everything in our power to secure that end; we have applied to the court; we have furnished the list of witnesses; the court ordered them to be subpœnaed by the Sergeant-at-Arms; we have no control over the Sergeant-at-Arms; we have done everything in our power. Now upon what principle should we be compelled to disclose what we expect to prove by a witness and see whether the other side will admit it? No lawyer would be willing to try a case in that way. The impression from such a proceeding would be that the side which admitted it thought it amounted to nothing, that it was a trifling affair, and that would be trying a case very unjustly and very unfairly in any court in the world. If we had been in default, if it was our fault that this man was not here, that might be the rule; but I have never, answering so far as my own practice in criminal courts goes, known a defendant compelled to testify what he expected to prove by his witness on an application for a first continuance.

The rule of our State courts, as I understand it, is that on the application for a second continuance the affidavit shall show what is expected to be proved by the witnesses, but on an application for a first continuance from one term to another parties are never required, so far as I know, to state what they expect to prove by the witness upon whose absence they ask a continuance. In the late criminal trials in the circuit court before Judge Drummond, the whisky cases, as they are usually called, last fall, he did rule that in applications for a continuance from one term to another the parties should state what they expected to prove by the witness. I do not know of any other instance in twenty-five years' practice where a court of law required that to be done in a criminal case on an application for a first continuance from one term over to another.

Mr. Manager HOAR. Mr. President and Senators, I understand the rule and practice to be perfectly well settled and enforced in all courts where justice is administered according to the forms and practice of the common law that a party in a civil or criminal case applying either for a continuance or a postponement on account of the absence of a witness must show—

First. That the witness has been duly summoned;

Second. That the evidence which the witness would give if present is material and important to his cause; and

Third. That the evidence must be so set forth that the opposite party may, if he choose, elect to admit that the witness, if present, would so testify; not to admit the fact, but that the witness, if present, would so testify; and that election is always tendered to the opposite party.

There is but one exception to the universality of that rule, which is, that where the evidence is of itself of a character which the witness only could state, that is not required of the party, as, for instance, if the question were of the construction of a dam which had been taken away, the scientific expert under whose direction that structure was built would be the only person who could describe it, and it would be impossible for the party ordinarily to say what his witness would testify to on that subject if he were present; but with that exception, of the evidence of experts where it is of such a character that the evidence could not be understood by the party who undertakes to set it forth, the rule is universal.

In the present case I fully concede that the defendant's counsel ought to stand before the Senate as if they had summoned the witness. They applied to the Senate for a subpœna. The Senate granted the order. The Sergeant-at-Arms did not execute it because, as he understood, there had been a subpœna issued already and served at the instance of the other party. So we agree that the defense stands here in all respects having used all diligence to obtain the presence of this witness; but the defendant shows no reason whatever why

* The Senate was to-day advised of the resignation of Mr. MORRILL, of Maine, so that the "Mr. MORRILL" hereafter mentioned is Mr. MORRILL, of Vermont.

he should not state the evidence which Mr. Evans would give if he were present and give us an opportunity to elect to consent to that evidence. In fact Mr. Evans, it appears, has been twice examined very fully in regard to this whole transaction before two different committees of the House. It is true that there was nobody present at that examination representing the defendant, and therefore certainly it is true that the defendant cannot be sure that the facts favorable to him within Evans's knowledge were brought out in that examination. I do not overlook that. I make that concession also as fully as the learned counsel could desire. Still, either he can state what Mr. Evans would testify if he were present, and his reasons for believing that he would so testify, or he has no reason to believe that Evans's testimony would be valuable to him if he were here. He cannot escape, as it seems to me, that dilemma. Either he has no reason to suppose that Mr. Evans would be more important to him than any other citizen of the United States who is at a distance of a thousand miles from this place or he can state what it is that this witness knows and would prove, and give us the opportunity to make our election.

I conceive that any distinction in practice which has grown up in State courts between a first continuance from term to term and a second continuance from term to term has nothing whatever to do with this matter. This is not a court having terms. It is a court which expires with its first and only term. This is not the case of an application for a continuance of a trial made before trial. It is a case where the trial has begun and has proceeded with the full consent in this particular of both parties. The evidence is fresh in the minds of all the members of the court. This, therefore, is a simple application for the postponement of a trial which is already far advanced toward its termination.

My associate [Mr. Manager JENKS] desires me to state the case of the trial of Smith and Ogden in the circuit court of the United States, where Judge Paterson establishes the rule that I have stated.

Mr. CARPENTER. Was that a civil case?

Mr. Manager HOAR. It cannot be worth while to cite in this body of lawyers an authority in favor of one of the best elementary principles of the law.

Mr. BLACK. What is the elementary principle you allude to?

Mr. Manager HOAR. The rule of practice in regard to postponement on the application of a party because of the absence of a witness.

Mr. BLAIR. Mr. President and Senators, it is proposed, I suppose, from this initiatory proceeding to treat this as an application for a continuance. Everything that has been said proceeds upon the assumption that we have applied for a continuance of this case, whereas we only ask that a witness who has been duly summoned, who ought to be here now, for whose absence we are not responsible, should be allowed a reasonable time to make his appearance, being detained by freshets or some other cause for which the party defendant is not in any way responsible. We have no disposition to abuse the patience of this body. We do not expect a delay beyond the time when the Senate will be in session in the transaction of its other business. We do not expect to detain this body with any long speeches. We have evinced no disposition whatever at any time, as I may appeal to the experience of every gentleman who hears me, to abuse the patience of this body in any respect, and above all not to try any sharp practice upon this body, but to have a fair trial.

I utterly protest against the application of rules derived from other proceedings altogether to the occasion which has arisen now, which is not an application for a continuance. We only ask that this body will wait until a man who has been summoned by its order makes his appearance here so that we may proceed with our examination.

While I am up I will say, however, that my learned friend on the other side and the very learned gentleman who makes this proposition are altogether mistaken or I am in regard to the rules of practice about what terms a party is to have who makes his application for a continuance. The gentleman who is associated with me has said that on application for a second continuance under the rules of the State in which I have practiced the party is required to state what the witness is expected to prove. The practice which prevails in the circuit court of this District and in Maryland, as my learned friend who represents that State on this floor [Mr. WHYTE] will bear me out, is that where a party makes an application for a continuance and states what he expects to prove by the witness, that proof is assumed to be a fact, not that the witness has proved it, but it is assumed to be a fact, an indisputable fact, according to the practice prevailing in this District, and in Maryland, from which State we derive the practice that prevails in the District. So that if the rule is to be enforced here and the analogy is to be taken from the practice prevailing in this District, if we state what we expect to prove by this witness and they proceed to trial, what we expect to prove is assumed to be an undisputed fact. That is the law of this District and the practice of the courts of the United States in the District of Columbia. That is a peculiar law. It does not prevail in the other courts with which I am familiar. It does not prevail in Missouri, where I practiced a great many years; but it is a law of this District and of Maryland. So then there are differences in respect to the laws of the different States. There is no uniform law on this subject. There is no common law upon this subject. There is none here recognized by this body. This court will have to make a rule for itself, and especially will it have to make a rule for itself in a proceeding which is not a motion for a continuance, but a motion for the delay of this trial until a witness can reach here who has been duly summoned.

Mr. Manager HOAR. I desire before the counsel sits down to ask him a question, and that is, if he knows of any court in his large experience where postponement was granted on account of the absence of a witness without satisfying the court that the witness, if present, would testify to something material to the interest of the party making the application? Does he know any tribunal on earth where there is a practice of postponing a case without doing that?

Mr. BLAIR. The gentleman knows perfectly well that when cases are called for trial in the ordinary courts of judicature the parties are asked whether they are ready for trial, that then and there the parties announce whether they are ready or not, and that motions for continuance are made and settled before they proceed to trial. Here there has been no occasion of that kind. We have been required to go to trial on this occasion without any "ifs" or "ands" about it, whether we were ready or not. We have been appointed a given day to be here. We have been notified that our witnesses would be summoned, and we have had the allowance of a committee of this body to summon them. We put their names in the hands of the officer to summon them. He has summoned them; and it is not our fault that this witness is not here. The analogies of the gentleman break down. One of the most unjust things in this world is to apply false analogies. It is the most misleading of all modes of reasoning.

Mr. Manager HOAR. I understand the learned gentleman's answer to be, then, in substance that he does not know of any such tribunal.

Mr. BLAIR. That may be the gentleman's conclusion. I state openly and fairly what I mean on this occasion, and it is for this body to determine and say for itself whether I have satisfied them. I do not hope to satisfy my learned friend on the other side.

Mr. BLACK. Will the gentleman accept an answer from me on that subject?

Mr. Manager HOAR. Yes, sir.

Mr BLACK. I say that where the court has a doubt about the good faith of counsel when they ask for a continuance of a cause, the counsel are always bound to satisfy the court that that doubt is not well founded.

Mr. Manager HOAR. If the learned gentleman will permit me, it does not seem to me to be a question of good faith of the counsel. It is a question of correctness. The counsel may suppose that certain testimony would be competent which the court would deem entirely incompetent if the witness were here. It is not a question of good faith; it is a question of fact or of law.

Mr. BLACK. No; this is it: Where a witness is absent whom the party was desirous to examine and had good reason to believe would be present, and the counsel suddenly finds himself in a situation where he cannot proceed any further in the cause without the presence of that witness, a simple statement of that fact to the court is always sufficient to require that the court shall give a reasonable continuance until the witness can be brought, unless there is some doubt about the materiality of the witness. If the court has any reason to suppose that if the witness were here he would not be material, then it ought not to grant the continuance. That is the case here. If anybody doubts the truth of what Mr. Carpenter has said, that we really cannot get on well without him, then the mere fact that he is a material witness, that he is absent, and it is very desirable we should have him here before we proceed any further, is a sufficient reason why there should be no objection made at all. When we are called upon to satisfy the court of the materiality of a witness it is not a proper thing for a court or anybody else to insist upon a statement of the specific testimony which the witness would give. It is a very great hardship upon us to ask it of us at this time, because in truth and in fact we cannot state it with the sort of precision that ought to be given. If we are to answer the question, "What precisely do you want to prove by that witness?" we say, "We want to prove the truth by him."

Mr. DAVIS. We cannot hear a word the counsel says, on this side of the Chamber.

Mr. BLACK. I was trying to satisfy the honorable managers that they ought to make no objection to what we are asking for now, namely, a continuance for a day, or such length of time as will enable us to get Mr. Evans here. I deny utterly the rule which they lay down with so much emphasis as being the true and only rule applicable to such a case, that is, that when a party is caught with an absent witness whom he had used all diligence to get here, and who he had good reason to believe would be here, it is either fair or just or law to push him forward or make him show the specific testimony which the witness would give if he were here, unless there be some reason to doubt the good faith of the application or the materiality of the witness, supposing him to be here.

The managers have produced a book, The Trials of Smith and Ogden. There the counsel for the accused asked for the continuance of the cause until they should be able to get certain witnesses from Washington, to which it was objected that they had not stated what

specific facts the witnesses would prove if they were present in court. Mr. Colden, of counsel for the defense, answered:

That is not the law as we have hitherto understood it. If we are obliged to offer an affidavit, we conceive it to be sufficient, in the first instance, to declare generally that the witnesses are material without specifying the particular points to which they are to testify, and that without them our client cannot safely proceed to trial.

To which the answer of the judge was this:

You must offer an affidavit, and must show in what respect the witnesses are material.

Now mark the reason upon which that ruling was founded:

The facts charged in the indictment took place, and are laid, in New York; the witnesses are admitted to have been during that period at Washington. The presumption is therefore that they cannot be material, and this presumption must be removed by affidavit.

That is the rule. If we were asking for a postponement on account of a witness who manifestly was a thousand miles off at the time the fact which we wished to examine him upon occurred, that would raise such a presumption against us that the court would very properly call upon us to show how that witness could be a material witness. They have cited this book as a precedent, and, so far as I have read it, it is a sound precedent. Let them follow it up. What happened immediately after that? The counsel in that case, as they bore a conscience in their bosom, forewent the advantage that they got by this decision, and they said, "We will not push you forward." They just had a little conference, laid their heads together, and said, "We will not ask you to go on to-day." Now, let the managers go and do likewise.

Mr. Manager JENKS. Mr. President, if the learned counsel will be so good as to come and lay their heads with ours and show us wherein it is necessary that John S. Evans should be here before they prove the good character of their client as an officer, it is possible and highly probable, if it appears to us to conduce to the ends or purposes of justice, that we shall act just as the counsel did in this case. But the inquiry here turns upon what is the law. What is the law that refers to this in United States courts? I do not agree fully to the extent that my honorable colleague from Massachusetts [Mr. Manager HOAR] has stated, that the law is always uniform that the applying party must state and swear what the materiality is specifically, because so far as my experience in United States courts goes it would be something like this: The United States judges in any particular district are very largely influenced by the decisions and laws of the State in which they are sitting. What might be accepted in one district very often is not accepted in another as a ground for continuance. Therefore the practice is not uniform, as I understand, but the rule is uniform that there is never a continuance had unless there be sworn evidence to sustain it. A party can swear that the witness is material, at least, but as to whether he must swear to the facts which constitute that materiality there is some discrepancy in the decisions, I believe, in the different United States courts. In the case cited of the trial of a misdemeanor in the circuit court of the United States in New York it was ruled that they must set forth the very ground of his materiality. Then what should be the rule in this court is really more pertinent than what has been the rule in other courts.

The learned counsel who last addressed the Senate states that the other side cannot give the Senate the very facts because they do not know them. Then the learned counsel does not know the very facts which make this witness material. In that case, on what do they found their opinion? Their client, I suppose, has told them that Evans is a material witness. If their client has not told them material facts which they can state or which they can swear to which would make him material, the counsel cannot conscientiously state it.

We go further than that. It is the right and province of a court to exercise its own judgment as to the materiality or immateriality of any testimony sought to be introduced. It may be merely cumulative. Here we stand in a particular place in this trial. The trial has gone through on the part of the prosecution. The defense have other witnesses in the case. This witness is on the road. Their witnesses in the case chiefly are with reference to character, as I understand. Why may they not at least go on with them? If they do not, at least let them state to the Senate why this witness must be called before they can go on with the other testimony. We disarranged our cause for the sake of expediting the trial. The Senate is not such a body that if you do not put in the testimony in a specific order it will not accept it.

I submit, therefore, that it is sufficient to decide the case at present, without establishing precedents for the future, that they have shown no ground for this continuance except the mere *ipse dixit* of counsel that they desire a continuance for the sake of order without stating why. We insist that this trial shall proceed.

Mr. CONKLING. Mr. President, I offer the order which I send to the Chair.

The PRESIDENT *pro tempore*. The Secretary will report the proposed order.

The Secretary read as follows:

Ordered, That the Senate will receive any evidence otherwise competent, which the counsel for the respondent assure the Senate will be connected with the case by the testimony of the witness Evans, now absent, but whom the respondent duly asked to have summoned and who is expected to appear.

Mr. EDMUNDS. That is all right.

The PRESIDENT *pro tempore*. The question is on agreeing to this order.

The order was agreed to.

Mr. EDMUNDS. I rise, if it is in order, to ask a question of the Chair. I ask whether the question to postpone the present procedure has been disposed of?

The PRESIDENT *pro tempore*. It has not.

Mr. EDMUNDS. Then that is the pending question.

The PRESIDENT *pro tempore*. There is no question. The request on the part of counsel has been made, but no formal motion has been entered. The Chair will receive a motion in writing.

Mr. SHERMAN. The order just agreed to may dispense with any further action on the question.

Mr. CARPENTER. Mr. President, there are some witnesses here which the respondent may call and examine, particularly on the subject of character, without regard to the witness Evans. We propose to go on and put in all the testimony we can, and then take our chances afterward.

NELSON H. DAVIS'S examination continued.

By Mr. CARPENTER:

Question. Colonel Davis, how long have you been in the Army?

Answer. Since 1846.

Q. What position do you hold now?

A. The position of Inspector-General.

Q. You were in the Army, then, during the entire administration of the War Department by General Belknap?

A. Yes, sir.

Q. Holding constant official relations with him?

A. Part of the time direct, so to speak. A part of the time I have been with the department commander, and therefore my communication with him officially has been indirect.

Q. From all you know of the subject, and from all you know of General Belknap, I ask you what has been the general character of his administration of the War Department?

Mr. Manager JENKS. Stop. The objection I make to that is that a witness must testify to character instead of to the specific acts of this man or general acts. He must know what has been said by those who are familiar with his administration in that office, instead of how has he done the business.

Mr. BLACK. It is character in the sense of reputation we are asking about.

Mr. Manager JENKS. It is character in the sense of reputation that you should confine yourself to.

Mr. Manager HOAR. We understand also that it should be the opposite of the particular offense charged. If a man is charged with adultery, his reputation for chastity; if he is charged with perjury, his reputation for veracity. We suppose the question should be, "What is the reputation of the Secretary for official integrity?"

Mr. CARPENTER, (to the witness.) Answer the question.

The WITNESS. I ask the question to be read.

The question was read by the reporter.

Mr. Manager HOAR, (to Mr. Carpenter.) That question we understand you modify.

Mr. CARPENTER. No, we do not.

Mr. Manager JENKS. It must not be the personal knowledge of the witness, but reputation.

Mr. Manager McMAHON. "What do other people say of him?" is the question.

Mr. CARPENTER. That opens up a very large question which I am certainly in no condition even to state to-day. We shall claim when we come to sum up this case that the general management of the War Department by General Belknap is a proper subject of consideration; that if they could establish this particular charge we could still prove the general management and official conduct of the Department, and then appeal to the Senate upon the whole record of the administration of that office whether this man shall be driven out into a little corner of his life or whether his whole conduct in the office is to be considered.

Mr. Manager HOAR. We do not understand that it is competent to prove by a subordinate officer in the Army, as an expert, the general character of the administration of a great officer of state. There is no such thing as an expert in such an administration. We object to the question unless it is limited to the reputation of the Secretary for official integrity.

Mr. BLACK. For integrity.

Mr. Manager HOAR. Well, you may leave out the word "official" if you prefer. We will not object.

The PRESIDENT *pro tempore*. Does the counsel modify the question?

Mr. CARPENTER. No, sir.

Mr. Manager HOAR. Then we object to it.

The PRESIDENT *pro tempore*. Objection is made. The question will be read by the reporter.

The question was read, as follows:

Q. From all you know of the subject and from all you know of General Belknap, I ask you what has been the general character of his administration of the War Department?

The PRESIDENT *pro tempore*. The question is, Shall this interrogatory be admitted?

The question was decided in the affirmative.

Q. (By Mr. CARPENTER.) Answer the question.

A. So far as my knowledge goes of the manner in which the administration of the War Department has been conducted by the late Secretary of War, General Belknap, it has been correct and upright; and so far as I know with regard to his character in that capacity it has been one of integrity and honesty. I know of nothing to the contrary.

No cross-examination.

Mr. CARPENTER. We will next call General Hancock.

The PRESIDENT *pro tempore*. The Chair is informed that General Hancock is too sick to leave his hotel.

H. T. CROSBY, recalled and examined.

By Mr. BLAIR:

Q. Mr. Crosby have you the post-traders' book?

A. Yes, sir; I have one of them.

Q. What is the history of that book?

A. The history of that book follows the legislation on that subject made in 1870. As soon as the law of 1870 came to be put into execution, giving to the Secretary of War the appointment of post-traders, a great many applications for that office came into the War Department from all sources, and it became necessary, as is usual in the War Department, to put them upon the record. They were so put upon the record in the Adjutant-General's Office; and I also kept a list, or several lists, of the applications and the recommendations. Prior, however, to my keeping any book or any proceeding being taken, the Secretary of War called for a report from every division and department commander as to who were at that time acting as post-traders by the appointment of any individual except the Secretary of War. Those lists were furnished from every department; I had them in my office on my desk; and I then commenced to keep lists of new appointments made under the act of 1870 by the Secretary.

Q. Have you got that book with you?

A. Yes, sir. [Producing a book.]

Mr. Manager McMAHON. Let me see the book before it is offered. [Examining book.] Proceed with the examination.

Q. (By Mr. BLAIR.) Turn to "Evans, Fort Sill," there, and say upon whose recommendation Evans was appointed.

Mr. Manager LAPHAM. Mr. President, we have all the papers upon which that appointment was made already in proof. Surely a record in the office of those papers can be of no avail or force.

Mr. BLAIR. This is merely introductory.

Mr. Manager LAPHAM. We have the original papers. They have been introduced in evidence and printed.

Mr. Manager McMAHON. I think it will not disagree with what we have presented.

Mr. BLAIR. Certainly not.

The PRESIDENT *pro tempore*. If there is no objection the witness will answer the question.

The WITNESS. [Examining book.] He appears to have been recommended by all the officers of the post at Fort Sill.

Q. (By Mr. Manager McMAHON.) That is the way it is entered, is it?

A. Yes; the papers themselves, of course, are on the public records. This is a mere memorandum entry.

Q. That is your mere conclusion from other papers that are on record?

A. That is what I took from the papers.

Q. (By Mr. BLAIR.) Have you the papers there showing that John C. Dent was a trader at that post?

A. This book does not show that Dent was a trader at that post at the time.

Mr. Manager LAPHAM. That has been proved undoubtedly. He was there at the time.

Mr. BLAIR. I put the question merely as introductory. Of course there can be no objection to the question from the fact that you have already proved it.

Mr. Manager McMAHON. Get to the substance of what you really want to prove.

Q. (By Mr. BLAIR.) Was he removed from that post and appointed to another post?

A. Yes, sir; his appointment was necessarily revoked by his appointment to another post by the order which the Secretary of War had issued in general.

Q. To what post was he appointed?

A. The post of Fort Union.

Q. Have you got his appointment there?

A. I think not.

Q. Is it entered on the book?

A. It is entered on the book.

Q. How many post-traderships are there?

A. I think about a hundred.

Q. How many of them have more than one trader?

A. I think not more than two.

Q. Do you remember the time when General McDowell was at the office previous to the making of the order of the 25th of March, 1872?

A. Yes, sir.

Q. Have you got the original of that order?

A. I have not. The original of that order was left with Mr. Murphy, the reporter.

Q. Were you present at the conversation between McDowell and the Secretary of War in regard to that order?

A. I was not present at one of the conversations, which took place in the inner room, the room next to the Secretary's corner room. After General McDowell came out of that room there was some conversation respecting that circular or order.

Q. Do you recollect the points of that conversation, and can you repeat them so as to let the Senate understand the spirit of the parties in making that order?

Mr. Manager McMAHON. What do we want with the spirit of the conversation? Give us the fact, and we can draw the spirit from the results accomplished by it.

Q. (By Mr. BLAIR.) You understand what I want. State the circumstances.

A. General McDowell brought in his hand, to the best of my recollection, a draught of that order written in his own handwriting. Conversation took place between him and the Secretary of War as to every material point in that circular. It was read over together. I heard the reading and the conversation. At this late day I cannot recollect the precise language used in that conversation by either party; but I do know that some of the points which were dwelt upon were the irresponsibility of soldiers to the trader for any goods purchased on credit, and the position in which the soldier would stand without some law or rule put upon the traders in regard to their prices. The subject of trading in appointments was also dwelt upon in consequence of the article which appeared in the New York Tribune; and one of those paragraphs was at that time framed for the very purpose of correcting such abuses as appeared in that article in the Tribune. That is the best of my recollection about it. I copied from General McDowell's manuscript what is called now the original order, which is in the hands of Mr. Murphy.

Q. Did the Secretary express a desire to have all the evils complained of in that article remedied?

A. Yes, sir; I so understood him.

Mr. Manager LAPHAM. One moment. To that form of question we object.

Mr. BLACK. State your objection to the form.

Mr. Manager LAPHAM. It does not ask for anything that was said.

Mr. Manager McMAHON. It is leading. That is the objection of the managers.

After consultation by the managers the objection was withdrawn.

The question was read by the reporter, as follows:

Q. Did the Secretary express a desire to have all the evils complained of in that article remedied?

A. The paragraphs, to my understanding, were framed for the very purpose of meeting every material point in that newspaper article.

Q. (By Mr. Manager McMAHON.) That was the object of that 25th of March, 1872, order?

A. That was my understanding.

Q. (By Mr. BLAIR.) Did General McDowell have that article there at the time with him?

A. I do not know whether General McDowell had it. It certainly was there with the Secretary of War.

Q. Did you hear it discussed between them?

A. I did.

Mr. Manager LAPHAM. The article in the Tribune you mean?

Mr. BLAIR. Of course, the article in the Tribune. (To the witness.) How was it discussed between these officers?

A. I heard them discuss that article.

Q. (By Mr. BLAIR.) Did they discuss the language that was used in the order to meet the points of the article?

A. Yes, sir.

Q. Was the discussion long continued?

A. Not very long. The order was already framed, and the conversation took place, as I understand and remember it, for the purpose of meeting by words, if words could express it, the points of that article, to stop such abuses as were alleged to exist there.

Q. Are these the books that are called the semi-official index-books? (Referring to the books produced by the witness.)

A. Yes, sir; these are those books.

Q. Were they kept by you?

A. They were kept by me.

Q. Was this Marsh letter that we have heard about here entered on these books?

A. Yes, sir.

Q. How was that book—take one of them—prepared?

A. When I was placed on duty in the office of the Secretary of War, that is to say in General Belknap's room, I had handed to me by him many letters, both official and those that were personal, which I found it necessary to keep the run of in my memory. For that purpose I got this book. I was not directed to get it by General Belknap. I did it because it is the usual form of keeping public records in the Department of War. In it I entered everything that I thought it material to remember, so that I should be relieved from the tax upon my memory and have it here where I could always refer to it and see what had been done with such a communication.

Q. Now I want the Senate to understand what is the character of these books. Are they secret books? Were they regarded in any sense by the Secretary as secret books?

Mr. Manager LAPHAM. That we certainly object to—how they were regarded by the Secretary.

Mr. BLAIR. Well, I will make it different. (To the witness.) Were they regarded in the Department as secret books?

A. No, sir; I think not.

Mr. Manager LAPHAM. By "secret" you mean "private," I suppose?

Mr. BLAIR. Yes; books to be withheld for any reason from official examination.

The WITNESS. There was no such character as that about them. They lay on my desk subject to everybody's inspection who came in.

Q. (By Mr. BLAIR.) What sort of papers were put upon them? Give some general idea to the Senate of the character of the papers that were entered upon those books.

A. I do not know that I could do that better than by reading one or two of them to show their character.

Mr. BLAIR. Well.

The WITNESS. Take the top of this page——

Q. Is that the page on which the Marsh letter appears to be entered?

A. No, sir; that is in the other book.

Q. Suppose you take that book and look that up and just read what is entered on that page where the Marsh letter is.

A. [After examining a book.]

E. A. Pierce, Sun Rise, Indiana.
Letter received on 6th of October dated October 3, 1870.
Recommended by the Vice-President and Senator Pratt for the post-tradership at Camp Supply.

The next entry is:

Charles Hubbell, Keokuk.
Requests letter of introduction to General Schofield and to the officers commanding at San Diego.

G. L. Lilly, Washington.
Inquires what proof or evidence will be required to establish a claim under the joint resolution of July 11, 1870.

G. S. Wilson, Dubuque.
Recommends J. H. McKnight for a post-trader.

Allen Dodge, Georgetown.
Requests an appointment as agent of the Government for the sale of arms.

That shows the character.

Q. Is not the Marsh entry on the same page?

A. Yes, sir.

C. P. Marsh.
Letter received October 10, 1870, dated October 8, 1870.
C. P. Marsh, New York.
Requests that the appointment of post-trader at Fort Sill be made out in the name of John S. Evans.

Cross-examined by Mr. Manager MCMAHON:

Q. How long have you been chief clerk in the War Department?

A. Since July, 1872.

Q. What position prior to that time did you occupy in the War Department?

A. I was the Secretary's clerk.

Q. How long previous to 1872?

A. Since November 1, 1869.

Q. During the time you were clerk to the Secretary you were tolerably familiar with his business?

A. I cannot answer that so broadly. I knew something about it.

Q. These indexed books that you have shown us relate all to the public business, do they not?

A. I think not.

Q. Have you any particular letter there now that you can pick out that does not refer in some way to the public business?

A. [After examining.] Here is one. "William Read, chairman, Philadelphia. Invitation to reception of Saint John's Commandery."

Q. Addressed to him as Secretary of War, was it not?

A. Yes, sir.

Q. Give me some other instance.

A. I should not say "as Secretary of War." That I cannot state. Of course it was addressed to General Belknap. What the address is I do not remember now.

Q. Give me some other instance of a letter purely private?

A. "Chairman of the Father Matthew convention, Henry V. Mulhall. An invitation to the Secretary to be present or to write a friendly letter for publication."

Q. That is to him as Secretary of War, is it not?

A. I do not know.

Q. He did not belong to the Father Matthew Society, did he?

A. I do not know.

Q. Give me another instance. Take one that is a business matter, outside of invitations to him as Secretary of War.

A. The next one is:

H. J. Ramsdell, Washington correspondent Tribune.
Wants copies of public documents for use of the London correspondent of the Tribune.

Q. Is that about Mr. Belknap's private business?

A. I do not know that it is.

Q. I do not want anything except some instance about his private correspondence that is indexed in that book. Is it not either something official or semi-official that is entered there?

A. Here is "Professor Cameron, of Princeton," who "wants letters of introduction to people abroad."

Q. That is addressed to him as Secretary of War officially, is it not?

A. I do not know.

Q. I will pass from that, if you cannot give me any other instance. Why did you give these books up and send them to the Secretary of War when the great majority of letters that are referred to there concern the public business?

A. A great many of these letters will be found upon the public files. When they were of an official character they were sent to the public files as well as entered here. Of course, those letters are still on the public files.

Q. Mr. Marsh's letter, however, requesting the appointment to be made to Mr. Evans was not on the public files?

A. No, sir.

Q. You have been speaking about opening a book of post-traders after the new law was passed in July, 1870. That is the book that you opened, is it? [Exhibiting one of the books produced by the witness.]

A. Yes, sir; it is.

Q. Your first column is headed "Garrison?"

A. Yes, sir.

Q. The next is headed "Post?"

A. I believe so.

Q. In that column is entered the name of the particular post?

A. Yes, sir.

Q. And the third column is entered under the head of "former trader." That means the man who was in when the law was passed?

A. Yes, sir.

Q. The next is "present trader." What does that mean; the person who was appointed by the Secretary under the new law?

A. Yes, sir.

Q. Then the next column, "appointed," gives the date of his appointment; the next the date of his acceptance, under "accepted;" and then the next column is "by whom recommended;" and the next, "remarks?"

A. Yes, sir.

Q. Now look at your book and state how many different applicants there were for this position at Fort Sill and by whom they were recommended. Give us the names, one after the other, of all the different applicants for the position.

A. I can give you such names as are on the book.

Q. That will do.

A. But the date of the application I cannot give you.

Q. That will do for the present.

A. John J. Fisher, recommended by officers.

E. H. Durfee by Senators Rice, McDonald, and L. H. Rouse.

C. P. Marsh by Senator SHERMAN and Hon. Job Stevenson.

W. O. Latimer by Hon. Alexander McDonald, Hon. Thomas Boles, Hon. John Coburn, and J. C. Abbott.

General W. W. McCall by Hon. SIMON CAMERON.

Henry Warren by J. W. FLANAGAN, O. P. Snyder, and Hon. W. Williams.

Those are all the entries that are in my handwriting.

Q. There are some others, are there not?

A. Yes, sir.

Q. Give us all from that record.

A. Levi Wilson, recommended by General Hancock, General Pope, General Sheridan, and General Van Vliet.

William Matthewson, by L. L. CROUNSE.

W. C. Hershberger, by Colonel Lewis Nye and Senator SHERMAN.

These latter ones are entered subsequently to the commencement of this trial.

Q. I do not care about those.

Mr. Manager LAPHAM. Since this trial commenced?

A. The last one I read, by Senator SHERMAN, was referred to the post council of administration.

Q. (By Mr. Manager MCMAHON.) Where is the letter that you refer to there in your handwriting as sent by Senator SHERMAN recommending Mr. Caleb Marsh? You had charge of these papers; where is that letter?

A. That letter went on the public files and is there still.

Q. Have you it there now?

A. It has been produced before your committee.

Q. The letter of Senator SHERMAN?

A. No; no letter of Senator SHERMAN.

Q. That is what I want to know about. Why did you enter there "Recommended by Senator SHERMAN" when you have no letter from Senator SHERMAN?

A. There may be a recommendation verbally as well as by letter.

Mr. CARPENTER. This is not index of correspondence merely.

Mr. Manager MCMAHON. We shall find out about that.

The WITNESS. I do not understand why this entry was made of any recommendation from Senator SHERMAN when none appears. I do not recollect whether he ever recommended him or not, of my own knowledge.

Q. You have no recollection at all of any letter from Senator SHERMAN?

A. None whatever.

Q. Have you any recollection of any communication from the Sec-

retary of War to enter Senator SHERMAN as a person recommending Marsh?

A. No, sir; I do not recollect any such thing.

Q. How did that get on your book, then?

A. I cannot understand it myself.

Q. How did Job Stevenson's letter get on that book when it was dated the 2d of November, a month after Mr. Evans was appointed?

A. I think I have explained heretofore that before I opened this book I kept lists upon which I entered recommendations. In draughting off from those lists I may have added any other name that came in in the mean time.

Q. By the recommendations that were put on file you mean the recommendations upon which the appointment was made, do you not?

A. Any recommendation that came. I do not know whether it was the recommendation on which the appointment was made or not.

Q. We will pass from that. You know of no letter or no verbal recommendation by Senator SHERMAN?

A. I have no recollection of any.

Q. This book was opened immediately after the law was passed was it not?

A. I think this book was not opened probably for two or three months after.

Q. You remember when the law was pending in Congress, do you not?

A. Not distinctly.

Q. Do you not remember that there were conversations between the Secretary of War and members of Congress in regard to this particular change of the law?

A. I recollect something about it; but it is very indistinct.

Q. Do you not remember that the Secretary of War was anxious to have the law changed so that he should have the appointment of post-traders?

Mr. CARPENTER. That is a little too general. Ask him what the Secretary of War said?

Mr. Manager McMAHON. I have a right on cross-examination to put a direct question.

Mr. CARPENTER. You have no right to ask whether the Secretary was not anxious for a thing.

Mr. Manager McMAHON. Since when under the law have I not the right to put a direct question?

Mr. CARPENTER. Since never.

Mr. Manager McMAHON. That is well answered. I repeat the question, Mr. President.

Mr. CARPENTER. The objection is simply that they cannot ask him whether the Secretary of War was anxious for something. Ask him anything the Secretary of War said or did.

Mr. Manager McMAHON. I will put the question in this way. (To the witness.) Did he not take an interest in the passage of the law changing the appointment of post-traders as it did?

A. I suppose he did.

Q. (By Mr. Manager McMAHON.) Do you not know that he did?

A. I have not much recollection about it.

Q. Have you not testified that he did?

A. I do not recollect.

Q. Did you not testify before the board of managers that he did?

A. I do not recollect.

Q. Were you not sworn before the board of managers in their room in this building?

A. I was.

Q. Was not that question put to you?

A. I have no recollection of it. I may have said something in general terms; I do not recollect.

Q. What do you say now; did he not take an interest in having the law changed so as to vest the appointment of post-traders in himself?

A. To the best of my recollection he did take some interest.

Q. As soon as the law was passed, where did the Secretary of War go?

A. That I do not know.

Q. Do you not remember his taking a trip to Iowa?

A. I recollect his taking several trips to Iowa.

Q. At that particular time do you not remember that he was gone to Iowa for some time?

A. No, sir; I have no recollection about it that is of any consequence; indeed I have no recollection at all of his going about that time.

Q. Look at your post-trader book, and give us the date of the first appointment of any post-trader under the new law.

A. That would be pretty difficult to find.

Q. It will not be if you run through the dates. Give us the earliest. See if you find any earlier than the 1st of October, 1870. [The book was handed to the witness and examined by him.] State after an examination of this book what is the date of the earliest appointment by the Secretary of War of any post-trader under the new law.

A. I do not know of my own knowledge.

Q. I ask you to state it from the book.

A. That shows either October 5 or 6. There are several of October 6.

Q. You hold in your hand what is a book, as I understand, that is kept as a sort of official record by you in regard to post-traders?

A. Yes, sir.

Q. By whom recommended and who was appointed, the date of his appointment, the date of his acceptance, and everything connected with it, and you have a final column there for "remarks," have you not?"

A. Yes, sir.

Q. State whether that book shows anything of the letter which we have produced here in which Caleb P. Marsh requests the appointment at Fort Sill to be made out in the name of John S. Evans.

A. No, sir, this book would not be likely to show that.

Mr. Manager LAPHAM. That we did not ask.

Q. (By Mr. Manager McMAHON.) It does not show it, does it?

A. It does not.

Q. The letter that I speak of now is the letter that you gave up to the Secretary of War the day before or the day of his resignation?

A. I do not think I gave it up to him. I think I gave it up to him with the package.

Q. (By Mr. Manager LAPHAM.) Do you mean that you did not give it singly?

A. Yes, I do not think I did; I think I put it in the package.

Q. (By Mr. Manager McMAHON.) You picked it out singly?

A. I picked it out singly and looked at it.

Q. When you go back to the War Department we want you to examine the official records there of the issuing of orders and the sending of letters from the 17th day of July, 1870, to the 1st day of September, 1870, and then tell us when you come back whether Secretary Belknap was in Washington City during that time, and, if so, how long, and, if not here, where he was. These two indexes and the one that indicates the letter of Marsh of October 8 are the books that you surrendered to the Secretary of War with certain letters?

A. Yes, sir.

Q. On the day or about the day of his resignation?

A. Somewhere thereabouts. I do not recollect the precise date.

Q. About how many letters; how large a package?

A. I think there was a package about the size of the book. [Exhibiting one of the memorandum books produced by the witness.]

Q. (By Mr. Manager LAPHAM.) About how many in number should you judge?

Mr. CARPENTER. Are they not all indexed there?

A. They are not all here A great many of them are on the public files.

Mr. Manager LAPHAM. Our question is as to the number delivered to the Secretary.

A. I cannot tell the number delivered to the Secretary, because all were not delivered that are marked on this index.

Q. (By Mr. Manager LAPHAM.) But state something about it.

A. I have no way of getting at the number.

Q. (By Mr. Manager McMAHON.) There were as many as two hundred, probably, were there not?

A. There may have been all the way from fifty to three hundred; I do not know.

Mr. Manager McMAHON. That will do. The witness is not discharged. We want him to return after having made this search.

Re-examined by Mr. BLAIR:

Q. When was Evans appointed, according to that book?

A. [After examining.] October 10, 1870.

Q. Look and see if the appointments at Forts Dodge, Hays, Reynolds, Sill, Sanders, Bridger, Buford, Ransom, Totten, Randall, Davis, Halleck, and a number of others were not made before his.

Mr. Manager McMAHON. We do not make any point as to the order of time.

Mr. CARPENTER. We do.

Mr. Manager McMAHON. We make no objection, then. I simply thought you were offering it as in answer to our cross-examination. Go ahead.

Mr. BLAIR. I thought you intended to show that there was great haste about the appointment of Evans.

Mr. Manager McMAHON. Not at all. We had another object. We wanted to get the date of the first appointment. There is no objection to the question being answered.

The WITNESS. The first appointment was at Fort Dodge, made October 6, 1870.

Mr. BLAIR. You need not examine it now. You can take that list with you, and when you come back give us the dates.

Mr. Manager McMAHON, (to the witness.) We understand that you are to examine each particular day between the dates I have given you and find out what days the Secretary signed the letters and orders in the War Department.

By Mr. CARPENTER:

Q. Do you not recollect that the Secretary of War was in Iowa in September of that year? Were you not there with him at Des Moines at a military gathering there?

A. Yes, sir; now that you speak of the military gathering I remember that I was there.

Q. Was General Belknap there?

A. General Belknap was there.

Q. And came from there back to New York?

A. I think he did. I do not recollect that.

Mr. CARPENTER. The testimony of Mr. Marsh takes it up and shows that he remained there some days and then returned to Washington.

Mr. Manager McMAHON. Yes.

Q. (By Mr. CARPENTER.) About how long was he in Iowa?

A. To the best of my recollection, about ten days or two weeks.

By Mr. Manager McMAHON:

Q. Do you remember the date of that gathering in Iowa?

A. I do not.

Q. Was it about the 1st of September?

A. I think it was.

Q. What makes you think it was about the 1st of September?

A. Well, I do not know what makes me think so. That is my impression. It was just at the end of the summer or beginning of the fall.

Q. Did you go with him?

A. I think I did.

Q. You went from here to New York first, did you not?

A. I do not recollect that.

Q. You went from New York then West to Iowa, did you not?

A. I do not recollect.

Q. Did you not return by way of New York?

A. I do not think I did. I may have done it.

Q. Did you return with General Belknap?

A. That I do not recollect.

Q. Do you remember now that Mr. Evans was here trying to work up his application for this post-tradership just after the law passed?

A. I do not recollect much about that, because I very seldom spoke to Mr. Marsh.

Q. I am not speaking of Marsh; I am speaking of Evans.

A. I know Mr. Evans was here.

Q. How soon after the law was passed was it that he was here?

A. That I do not recollect.

Q. Was it not a short while?

A. I do not know. I do not recollect that distinctly.

Q. Do you not remember now that he field a recommendation that was dated on the 23d of June, 1870, nearly a month prior to the passage of the law?

A. I do not know anything about that.

Q. Do you not remember seeing Mr. Evans out in Iowa?

A. No, sir; I do not recollect that. I have heard that said, but I do not recollect it.

Q. Do you not remember that Mr. Evans was out there and made an application to the Secretary of War for this place, and that he told him to wait until he got to Washington; that he would not consider these matters until he got back to Washington City?

A. I have no recollection of ever hearing him say that or seeing him there.

Mr. BLAIR. We ask the Secretary to read an extract from the report of the Secretary of War.

Mr. Manager McMAHON. We have no objection to that going in in view of the fact that it was after the election of the incoming Congress.

Mr. CARPENTER. If you have no objection it is not worth while to sum up on it at present.

Mr. Manager McMAHON. I simply state the fact.

Mr. BLAIR. This is an extract from the report of the Secretary of War for the year ending June 30, 1875, the annual report.

Mr. Manager McMAHON. It is really December, 1875.

The Chief Clerk read from the report of the Secretary of War, dated November 22, 1875, as follows:

By the act of July 15, 1870, the Secretary of War was authorized "to permit one or more trading establishments to be maintained at any military post on the frontier, not in the vicinity of any city or town, when he believes such an establishment is needed for the accommodation of emigrants, freighters, or other citizens. The persons to maintain such establishments shall be appointed by him, and shall be under protection and control as camp-followers." This changes the previous custom, under which the department commander had charge of the appointment of sutlers for military posts. I suggest that a law be passed giving the appointment of sutlers, as heretofore, to department commanders, including in its provisions authority, as it now exists, to the council of administration at each post to regulate the prices of the goods to be sold by the traders, and also authority to the proper military commander to limit the amount to which a soldier shall be trusted by the sutler, that amount to be collected from his monthly pay. A provision of this kind would, I think, be wise, as it would prevent that excess of expenditure which now occurs where there is no supervision exercised.

Mr. Manager McMAHON. Gentlemen, have you any other message or recommendation prior to that, between 1870 and 1875? We have no objection to that going in as well.

Mr. CARPENTER. We desire to return our thanks for the gushing generosity of the managers, which we have not noticed until very recently, or else we should have acknowledged it before.

Mr. Manager McMAHON. It was to the poverty of the gentlemen that I made the appeal. I knew they had none to offer.

Mr. CARPENTER. That detracts very much from the generosity I gave the manager credit for.

NAPOLEON B. McLAUGHLIN sworn and examined.

By Mr. BLAIR:

Question. State your position and occupation.

Answer. I am a major in the United States Army, Tenth Cavalry.

Q. Where stationed?

A. At Fort Sill.

Q. How long have you been stationed at Fort Sill?

A. Nearly two years.

Q. Are you a member of the council of administration at that post?

A. A council of administration is appointed every month or two. I was a member of the council of administration two months ago at Fort Sill.

Q. Was Mr. J. S. Evans recommended by you as a member of that council for the post-tradership?

A. He was.

Q. Did the whole council join in his recommendation?

Mr. Manager McMAHON. When is this that you are referring to; what date?

Mr. BLAIR. When he was a member of the council.

Mr. Manager McMAHON. That is since March 2, 1876, is it not.

Mr. BLAIR. Yes.

Mr. Manager McMAHON. That has been ruled out by the Senate, Mr. President; the recommendations of this party——

Mr. CARPENTER. The record was ruled out. We now want to establish the fact by the witness.

Mr. Manager McMAHON. Perhaps I ought properly to ask first what you expect to prove.

Mr. CARPENTER. To prove that Mr. Evans was a first-rate trader and good business man.

Mr. Manager McMAHON. I expect we shall agree to that.

Mr. CARPENTER. That is the end of it, then.

Mr. BLAIR. That is all we wanted to prove by Major McLaughlin.

Mr. CARPENTER. Let us have this agreement understood. I understand that the managers consent that Mr. Evans was a first-class trader and a good business man, recommended unanimously by the board?

Mr. Manager McMAHON. We admit that the appointment itself was a good appointment; but it was unfortunate that he had to get it in the way he did. That is our admission.

Mr. CARPENTER. I guess we had better go on with the witness. Your generosity is fading out again.

Mr. Manager McMAHON. I concede all you ask.

Mr. Manager HOAR. We concede that he was a good post-trader and a good business man.

Mr. Manager McMAHON. We do in good faith.

Mr. CARPENTER. And was unanimously recommended by the council of administration and all the officers at the post about the 8th day of March, 1876?

Mr. Manager McMAHON. Yes, sir.

Mr. CARPENTER. That is admitted, is it?

Mr. Manager McMAHON. Yes, that is agreed. Not only was he so then, but was back in 1870 as well.

Mr. BLAIR. Then we need ask no more questions of this witness.

Mr. Manager McMAHON. We shall put none.

CHRISTOPHER C. AUGUR sworn and examined.

By Mr. BLAIR:

Question. What is your rank and present command?

Answer. My rank is that of brigadier-general in the Army, and I at present command the Department of the Gulf.

Q. How long have you held that command?

A. I have held that command since some time in March of last year.

Q. Where did you command previously?

A. I commanded previously to that the Department of Texas.

Q. How long did you command in Texas?

A. I commanded in Texas from early in January, 1872.

Q. Did these several commands that you have held bring you into relations, correspondence, and official communication with the Secretary of War?

A. Yes, sir.

Q. Did you become well acquainted with him?

A. Very well.

Q. Will you be good enough to state, from your own knowledge and from his reputation among commanding officers in the service, what his character is as an efficient and honest administrator of his Department?

A. So far as I know and so far as I had relations with him in reference to my own department—I speak particularly of that—and so far as I know in other respects, his administration was regarded as a just, able, and efficient one. He was zealous for the interests of the service, so far as my own departments were concerned. I know that from his manner and from my intercourse with him.

Q. Was his character upright in dealing with all business?

A. So far as I ever heard.

Cross-examined by Mr. Manager McMAHON:

Q. Where did Mr. Belknap reside before he was appointed Secretary of War?

A. I do not know of my own knowledge. I understood that he was a resident of Keokuk, Iowa.

Q. Were you aware of the fact that he was collector of internal revenue for some years in Keokuk, Iowa?

A. Not of my own knowledge.

Mr. CARPENTER. Will the managers state what the object of that kind of examination is?

Mr. Manager McMAHON. I want to inquire upon cross-examination the extent of the witness's knowledge, and to open a matter that we may go into before we get through. The gentleman would not take our admission, and now we want to inquire what the reputation of General Belknap may have been at Keokuk, Iowa, in public matters in connection with internal revenue.

Mr. CARPENTER. We shall be glad to have you do it.

Mr. Manager McMAHON. The gentlemen may laugh; but if they press the inquiry we have the right to cross-examine.

Mr. CARPENTER. You can sail right in.

Q. (By Mr. Manager McMAHON.) State whether you had any acquaintance with or knowledge of what people said about him in the town in which he lived as to his reputation for honesty and fair dealing in public office.

A. I know nothing of it.

Q. About how much association have you had with people who are intimately acquainted with General Belknap?

A. None, except with officers of the Army.

Q. How near did you ever live to General Belknap?

A. I do not know. I have been on the frontier at Omaha since 1867 and in Texas. I do not know where the Secretary resided during that time.

Q. And you have no knowledge of what his neighbors and those who associated with him say about him at home in Keokuk?

A. No, sir; I only know him through his connection with the Army.

RALPH P. LOWE sworn and examined.

By Mr. CARPENTER:

Question. Where do you reside?

Answer. In Washington City.

Q. How long have you resided here?

A. Two years last May.

Q. Where did you previously reside?

A. I formerly resided at Keokuk, Iowa.

Q. What official positions have you held in the State of Iowa?

A. I was prosecuting attorney for the State of Iowa and for the Federal Government a part of the time; I have been on the district bench; I have filled the office of governor and member of the supreme bench of Iowa.

Q. How long had you lived in Keokuk before coming here?

A. Twenty-five years.

Q. How long have you known and how intimately have you known General Belknap?

A. About a quarter of a century.

Q. How intimately?

A. I should think as intimately and as closely as any other person outside of his own family.

Q. Do you know his reputation and character in the city of Keokuk in regard to private and public life?

A. I think I do. He was a close neighbor of mine. He lived next door to me with his family up to the time he came here as Secretary of War.

Q. What was that character?

A. I think it was very good. During the twenty-five years I have known the General I had no reason to distrust——

Mr. Manager McMAHON. Never mind that. It is only his general reputation among his neighbors that is competent.

Q. (By Mr. CARPENTER.) As the managers are getting a little anxious on one point, I will ask you if you know anything about his reputation as internal-revenue collector?

A. I know something of it, his general reputation.

Q. Was that good?

A. The collections of the internal revenue in that district were very large, unusually large during the time he was collector. I think the collections were very close indeed.

Mr. Manager McMAHON. That is not the question. The question is his reputation. I object, of course. The proper question is what his neighbors said on the point.

Q. (By Mr. CARPENTER.) Very well; what was his reputation in that respect?

A. I think it was very good indeed.

Cross-examined by Mr. Manager McMAHON:

Q. Were you ever connected with him in business?

A. Yes, sir; he was a partner of mine in the practice of the law. When he first came there he entered my office as partner.

Q. By whom was he appointed collector of internal revenue?

A. I presume he was appointed by the President of the United States.

Q. Who was President at that time?

A. I believe it was Andrew Johnson.

Q. How long did he hold that place?

A. He held it up to the time he was appointed Secretary of War; two, three, or four years.

Q. Are you acquainted with Hon. Mr. McCRARY, Representative from that district?

A. Very well.

Q. You can state now all you know about certain charges, if any, being preferred against the collector of internal revenue, if there were any, in regard to the management of matters in that district.

A. I never heard of any.

Q. Was there not an effort made for his removal?

A. I never heard of it.

Q. Are you not aware that Mr. McCRARY when elected made formal application to have him removed?

A. I am not. I never heard of it before.

Q. You did not know that?

A. No, sir.

Q. I understood you to say that you left there two years ago.

A. A little over two years ago.

Mr. CARPENTER. Will the Sergeant-at-Arms go over to the House and request Mr. McCRARY to come here as a witness?

Mr. Manager HOAR. I think Mr. McCRARY has gone home for the session.

The WITNESS. Mr. McCRARY has returned home. He is not here.

Mr. Manager McMAHON. I was not aware of the fact myself when I put the question, or I should not have put it in that shape.

Mr. CARPENTER. We ask the court now for a subpœna to be issued at once and be delivered to the Sergeant-at-Arms at once for Hon. Mr. McCRARY, a member of the House from Iowa.

Mr. Manager McMAHON. The gentleman had better put it in a different shape. Mr. McCRARY being a member of the House, and the House being in session, whether a subpœna could reach him is a question that the gentleman had better consider.

Mr. CARPENTER. He cannot protect himself against a subpœna of the court by leaving his duties in the House.

Mr. Manager McMAHON. If the House has given him leave, it is a matter between him and the House.

Mr. CARPENTER. If he is absent on leave he is a private citizen *pro tanto*.

Mr. Manager McMAHON. I have no further suggestion to make.

Mr. CARPENTER. Much obliged to you for what you have made.

Mr. Manager McMAHON. I will proceed with the cross-examination of Mr. Lowe. (To the witness.) Have you never heard the transactions of the defendant impeached by people that were his neighbors out in Keokuk, Iowa?

A. I never heard of but one circumstance, and that grew out of his real-estate operations. All the real-estate operators there went over the board in the crisis of 1857, and General Belknap, like all the others, was unable to meet all the liabilities that he had incurred during the few years prior to that crisis.

Mr. Manager McMAHON. I do not care about those matters.

Mr. CARPENTER. Had you not better go on and press it?

Q. (By Mr. Manager McMAHON.) What I want to get at is whether you ever heard any person speak of his transactions; I do not want the transactions themselves.

A. I heard of a rumor of a particular transaction which was settled to the entire satisfaction of all the parties as I understood.

Q. It required settlement, did it?

A. I do not know; it was settled. I saw Mr. Lomax's communication to the Tribune—he was the party concerned—in which he stated that the transaction had been settled to his entire satisfaction, and I think of the public there generally.

Q. While that thing was unsettled was there talk about it?

A. There was some talk about it.

Q. Of what character?

A. Of the character that he did not meet his liabilities; that he had incurred a certain liability which he was unable to meet; but as soon as he got able, as soon as he came out of the Army, he had some money and settled it to the satisfaction of all parties. The transaction came out, I think, while he was in the Army. He did not meet the liability at the time perhaps he should have done, but very soon after he came out it was arranged to the satisfaction of everybody.

Q. What did you hear, if anything, in regard to his transactions as collector of internal revenue, not only at the time that he was collector, but at any time then or subsequently?

A. All that I heard was very good; all in his favor.

Q. That is, there was a great deal of revenue?

A. I heard that he was praised here at Washington for his promptness and fidelity as an officer and for the large collections which he made in that district.

Q. Do you not know that they made very large collections in Missouri; that while the thing was running "crooked" there the collections were very large?

A. I do not know. I did not hear anything about that.

Q. And since the law is enforced the collections are very small, are they not?

A. I do not know about the operations in Missouri. I never heard anything about them until this "whisky ring" was ferreted out and the parties punished.

Re-examined by Mr. CARPENTER:

Q. You said that a certain transaction was settled. The manager asked you if it was a transaction that needed settlement. How is it about book accounts between two individuals; do they need settlement?

A. I suppose so.

Q. When a promissory note is paid that is a settlement of the note, is it not?

A. I presume so. I understand it to be so.

Q. The sum and substance, head and front, of this thing was that General Belknap was a little short at one time?

A. Yes, sir, unable to meet his real-estate obligations.

Q. That is common with all speculators in that town?

A. Yes; about three-fourths of the town, I think, became bankrupt then.

Q. Of course I understand you to say, Governor, that he subsequently did meet the obligation to the satisfaction of the man to whom he was owing?

A. I saw a statement under the hand of Mr. Lomax to that effect.

Mr. CARPENTER. Mr. President, I desire to call Senator ALLISON, of Iowa.

The PRESIDENT *pro tempore*. The Senator will stand in his place and be sworn.

Hon. WILLIAM B. ALLISON sworn and examined, standing in his place.

By Mr. CARPENTER:

Question. Where do you reside?

Answer. I reside at Dubuque, Iowa.

Q. How far from Keokuk?

A. About two hundred miles.

Q. How long have you known General Belknap?

A. I have known General Belknap since 1859, I think.

Q. Are you acquainted with his general character and reputation in the city of Keokuk, and the State of Iowa, and all around that neighborhood?

Mr. Manager LAPHAM. Mr. President, I desire to make an objection to that question. If there is any rule in the world that is well settled, it is that a witness not of the vicinage of the person to be sustained cannot be called to prove his general character. No man can go two hundred miles for the purpose of ascertaining the reputation of another and then testify to it. The question has been repeatedly decided.

Mr. BLACK. How near must he be?

Mr. CARPENTER. Will the honorable manager allow me a question?

Mr. Manager LAPHAM. Certainly.

Mr. CARPENTER. What would be the vicinage of General Grant if his character was in question, or General Sherman, or General Phil Sheridan?

Mr. Manager LAPHAM. Either their former residence or their present residence.

Mr. CARPENTER. We could take our choice?

Mr. Manager LAPHAM. Yes.

Mr. CARPENTER. But could not take both.

Mr. Manager LAPHAM. You may prove the general reputation of General Belknap at any former period of his life by anybody that knew what it was; but I admit that the rule is perfectly well settled in all courts that no man can go from the vicinage of another a distance of two hundred miles and there learn sufficient to enable him to speak upon a question of general reputation.

Mr. BLACK. What is the precise distance, Mr. LAPHAM; how many miles, furlongs, feet, and inches must the witness have resided from the party's residence?

Mr. Manager LAPHAM. Within what is termed "the neighborhood."

Mr. CARPENTER. That means the jurisdiction of the justice of the peace, does it not? Is not that "the vicinage" to which the manager refers?

Mr. Manager LAPHAM. Not quite that.

Mr. Manager McMAHON. I suggest that the proper foundation is this: If the witness who proposes to speak is well acquainted with the neighbors who are about the party, he can then speak as to what the neighbors say. I think that is the true rule.

Mr. CARPENTER. Will not the reporter read that question?

The PRESIDENT *pro tempore*. The reporter will read the question.

The question was read by the Official Reporter, as follows:

Q. Are you acquainted with his (Belknap's) general character and reputation in the city of Keokuk, and the State of Iowa, and all around that neighborhood?

The PRESIDENT *pro tempore*. Do the managers insist on the objection?

Mr. Manager LAPHAM. Yes, sir; we object.

The PRESIDENT *pro tempore*. Shall this interrogatory be admitted?

The question was decided in the affirmative.

The PRESIDENT *pro tempore*. The question will be answered.

A. I have no special knowledge of General Belknap's character at Keokuk. Of course I know a good many people in Keokuk. I know in the State of Iowa, that, so far as acquaintance goes, he bore a good name.

No cross-examination.

Hon. GEORGE G. WRIGHT sworn and examined standing in his place.

By Mr. CARPENTER:

Question. How long have you known General Belknap?

Answer. About twenty-five years.

Q. How far do you reside from him?

A. Counting Keokuk as his home, I reside about one hundred and fifty miles. I did reside, however, for fifteen years within fifty miles of him.

Q. You say you have known him for about a quarter of a century?

A. Yes, sir.

Q. Do you know his general reputation in the State of Iowa?

A. I think I do.

Q. What is it, good or bad?

A. Good.

Cross-examined by Mr. Manager McMAHON:

Q. Did you ever hear a Keokuk man speak of General Belknap?

A. O! yes, sir.

Q. Did you ever hear his integrity questioned?

A. Never.

THOMAS H. RUGER sworn and examined.

By Mr. CARPENTER:

Question. You are an officer of the Army?

Answer. I am.

Q. A graduate of West Point?

A. I am.

Q. Have you been some years superintendent at West Point?

A. I have been.

Q. How long?

A. Since the 1st day of September, 1871.

Q. Are you still there?

A. I am.

Q. Have you as Superintendent of the Military Academy been in official communication and relations with the Secretary of War while General Belknap was in that office?

A. Yes, sir.

Q. From your knowledge of General Belknap and his manner of doing business, I ask you what, in your opinion, was the general character of that administration?

A. So far as the Military Academy is concerned, the character has been that of a person who was zealous for the welfare of the academy and attentive to his duties——

Mr. Manager McMAHON. That is not in issue in this case.

Mr. CARPENTER. O, yes, it is.

Mr. Manager McMAHON. I certainly must raise that question. We have no objection to his honesty, integrity, and official patronage being brought in; but, as to the Military Academy, I fail to see how it comes in.

Mr. CARPENTER. It only comes in as one branch of the service over which he was administering.

Mr. Manager McMAHON. You are only entitled to go into general reputation.

Mr. CARPENTER. General reputation as to each branch of the business.

Mr. Manager McMAHON. No; general reputation for honesty and integrity; not in any particular branch, but generally. I submit the question to the Senate.

Mr. CARPENTER. Let the question be reported.

The question and answer were read by the Official Reporter, as follows.

Q. From your knowledge of General Belknap and his manner of doing business, I ask you what, in your opinion, has been the general character of that administration?

A. So far as the Military Academy is concerned, the character has been that of a person who was zealous for the welfare of the academy and attentive to his duties——

Mr. CARPENTER. Nothing further.

Mr. Manager McMAHON. If that is all, we have no questions to ask.

S. V. BENÉT sworn and examined.

By Mr. CARPENTER:

Question. You are an Army officer?

Answer. Yes, sir.

Q. A graduate of West Point?

A. Yes, sir.

Q. How long have you been in the service?

A. About twenty-seven years.

Q. What is your present position?

A. Chief of Ordnance, United States Army.

Q. Were you Chief of Ordnance during the time General Belknap was Secretary of War or some portion of it?

A. I have been Chief of Ordnance since June, 1874.

Q. Before that, in what position were you?

A. I was acting Chief of Ordnance for several months prior to that date, and prior to that I was assistant in the office of the Chief of Ordnance since October, 1869.

Q. And from that time you were more or less familiar with the business of the office?

A. Yes, sir; entirely familiar with it.

Q. What is about the amount of funds disbursed through your Bureau annually?

A. I did not know that question would be asked, but I guessed at it, and I should say that we have expended through the office—I cannot say how much annually; but since July, 1869, there has been expended over $13,000,000.

Q. Yours is a Bureau of the War Department?

A. Yes, sir.

Q. And the funds that go to that and to all the other Bureaus of the Department are in a general way supervised by the Secretary of War, are they not?

A. Yes, sir.

Q. Drawn on his requisition from the Treasury Department?

A. Yes, sir; all of them.

Q. I ask you now, from your knowledge of General Belknap and his connection with the public service and yourself with him as public officers, whether in your opinion the general administration by General Belknap of the War Department has been a good one or a bad one or what it has been?

A. My impression is that his administration has been most excellent.

Cross-examined by Mr. Manager McMAHON.

Q. Explain how this money was passed through the Secretary's hands and how many persons are in the different Departments who are checks upon it. It is not in his private pocket to handle as he pleases, is it?

A. Not at all?

Q. Explain how many checks there are upon that to guard it.

A. Whenever I desire money to be sent to a disbursing officer at an arsenal, I make a requisition upon the Secretary of War for a certain amount of money under a certain appropriation to be transferred to that officer. He then makes a requisition upon the Treasury Department, and the money is sent from the Treasury Department to the officer.

Q. How many different persons would be able to show that money had been abstracted by him if it had been abstracted by him, according to the checks and method of doing business in the Department?

A. I cannot answer that question.

Q. More than one person, would there not be?

A. In fact, I do not see how he could abstract it at all.

Mr. Manager McMAHON. That will do.

Re-examined by Mr. CARPENTER:

Q. Would it be possible for an unscrupulous Secretary of War to have fingers in contracts of considerably large amounts?

A. If he had some one to help him, probably.

Q. Are there not a good many ways by which a Secretary of War, if he were a dishonest man, could lay aside a good deal of money?

A. I think so. I think it almost impossible to have the checks and balances so closely and perfectly arranged that a dishonest man could not take advantage.

Recross-examined by Mr. Manager HOAR:

Q. Do you mean to say that it would be possible for a Secretary of War to have those fingers—to use the phrase of the counsel—in contracts with your knowledge or without your knowledge?

A. I say that usually in such transactions it requires more than one party.

Q. But you were asked by the counsel whether it would not be possible for an unscrupulous Secretary of War to have fingers in contracts, and you said it would. Now I ask you whether that would be possible without your knowledge?

A. I think it might be without my knowledge, but I have my doubts. I do not know that I could answer the question positively. I do not really know that he could very well.

Q. Then it would not be possible for an unscrupulous Secretary of War to commit that dishonesty without being detected by you and being exposed? Is that what you mean to say?

A. I should think it would be very difficult.

ANDREW A. HUMPHREYS sworn and examined.

By Mr. CARPENTER:

Question. You are an Army officer, and a graduate of West Point?

Answer. Yes, sir.

Q. Chief of Engineers?

A. Chief of Engineers.

Q. How long have you been in the service?

A. Since 1831, with the exception of a year or two.

Q. Were you Chief of Engineers during the administration of Belknap as Secretary of War?

A. I was. I became Chief of Engineers in August, 1866.

Q. Your Bureau is part of the War Department, of course?

A. Yes, sir.

Q. Are your duties of such a character as to bring you into very close communication officially with the Secretary of War?

A. Very constant and close communication.

Q. From what you have seen and known of his administration as Secretary of War, I ask you whether it has been a good one or a bad one?

A. His reputation has been high as a man of integrity and as a man of ability.

No cross-examination.

R. B. MARCY sworn and examined.

By Mr. CARPENTER:

Question. You are an officer of the Army?

Answer. Yes, sir.

Q. A graduate of West Point?

A. Yes, sir.

Q. What position do you hold at present?

A. Inspector-General of the Army.

Q. Have you held that office during the administration of Belknap in the War Department?

A. All the time.

Q. Are the duties of your office of a character to bring you into close relations with the Secretary of War?

A. Quite so.

Q. From your knowledge and experience under his administration what do you say of it; was it good or bad?

A. I should say that he conducted the affairs of the War Department, in my judgment, with eminent zeal, ability, and integrity.

Q. I want to ask you about sutlers in the Army previous to 1872. Under the old system were they always living at their posts or were they sometimes living away from their posts?

A. I never knew one who lived away from the post. There may have been exceptions to that, though. When I was stationed at military posts on the frontier, the sutlers always made their homes at the posts. They were away purchasing goods a portion of the time, but they were generally at the post.

Q. Was there any regulation of the Army requiring them to reside at their posts previous to that of March 25, 1872?

A. I do not think there was any specific regulation, but it was generally understood that they were to do so.

No cross-examination.

WILLIAM MCKEE DUNN sworn and examined.

By Mr. CARPENTER:

Question. Are you an officer of the Army—the Judge-Advocate-General?

Answer. Yes, sir.

Q. Have you been present during the testimony so as to know what is meant by the "Robinson letter" that has been introduced here?

A. Yes, sir.

Q. Where did you first see that letter?

A. I think I first saw it in the office of the Secretary of War.

Q. At what time?

A. About the time it was received, I should think; not long after it was received. It was before there was any action taken on the record of his trial.

Q. Where did you see it afterward.

A. I saw it afterward in the office of the Judge-Advocate-General.

Q. You were assistant judge-advocate-general at that time?

A. At the time I first saw the letter I was the assistant judge-advocate-general.

Q. Was the case of Robinson being considered in the office of the Judge Advocate-General?

A. I think it was at that time. My recollection is that I was called into the office of the Secretary of War and was asked whether the record was in my office in the War Department building. It was not. That was the first I had heard of the case.

Q. And that was about the time you saw the letter?

A. I think so. I either saw the letter then or it was read to me. I became acquainted with the contents of the letter in some manner.

Q. While the case of Robinson was under consideration in the Department?

A. Yes, sir; before the case of Robinson was acted upon by the Secretary of War.

Q. Do you know that the Secretary of War recommended the approval of the finding of that court?

A. I have every reason to believe he did. It was my business when reports of cases of officers were sent up from the Judge-Advocate-General to read them to the Secretary of War; and while I do not distinctly recollect that I read that record to him, I think I did. At least I have sufficient reason to believe that he thought the sentence ought to be approved.

Q. You have held this office while General Belknap was Secretary of War?

A. Yes, sir.

Q. What, in your opinion, was the general character of his administration of the War Department?

A. So far as I could judge, I would characterize it as General Marcy did; that it was able, zealous, and honest.

Cross-examined by Mr. Manager MCMAHON:

Q. Do you remember how it was that the Robinson letter was found or hunted up in your office after the resignation of the Secretary of War?

A. Yes, sir.

Q. It was through a publication of Robinson's, was it not?
A. I think that after Robinson made a publication the letter was inquired for.
Q. The President of the United States ordered a search for it, did he not?
A. I know nothing about that. General Townsend, I think, was the party who first made inquiry about it.
Q. There had been a publication by Robinson in which he alluded to it. You remember that fact, that he had written such a letter?
A. Yes, sir.
Q. Search was made, and it was found in your office?
A. I do not know that he had alluded to the fact that he had written such a letter, but in some way or other he claimed credit for the exposure of Secretary Belknap.
Q. And claimed, did he not, in an interview to have brought the attention of the President to it as well?
A. I do not remember. There was some newspaper article published in regard to it.

SAMUEL F. MILLER sworn and examined.

By Mr. CARPENTER:

Question. You are, I believe, a civil officer of the United States?
Answer. I have the honor to be one of its officers; a member of the Supreme Court.
Q. How long have you been acquainted with General Belknap?
A. I think since 1851 or 1852; I am not precisely sure which year.
Q. Where do you reside?
A. I reside in Keokuk, Iowa. General Belknap came to Keokuk, I think, a year or a year and a half after I did. I went there in the spring of 1850.
Q. You have known him ever since?
A. I have known him, I think, very well since. He married just shortly afterward a young lady across the street from my house, and my sister-in-law was bride-maid to his first wife; and we have been on social and friendly terms from that day to this.
Q. Are you acquainted with the general character of Belknap in the city of Keokuk?
A. I think I can say that I am.
Q. What is it, good or bad?
A. It is very good.
Q. What is his character, if he has any, in the city of Keokuk as a collector of internal revenue?
A. General Belknap was collector of internal revenue after I came to be a judge, and I resided in Keokuk about three or four months in the year; I remember paying my own income tax to him; and I never heard anything said against General Belknap in the world as regards his character as a collector of internal revenue.
Q. It has been said here that at some one time of his life he was pretty short and could not pay some debts that he had contracted for real estate. Do you know anything about that?
A. I think that was true.
Q. Do you think he lost any character in Keokuk on account of it?
Q. I do not think he did. I think, if you will permit me to say so, that I did the largest collecting business at that time in Keokuk or Southeastern Iowa, and among other collections I had a good many notes and claims against Mr. Belknap, and I know of no man in those pressing circumstances who acted with more honor uniformly than General Belknap did.
No cross-examination.

Hon. JOHN A. KASSON sworn and examined.

By Mr. CARPENTER:

Question. You are a member of the House of Representatives from the State of Iowa?
Answer. I am.
Q. Where do you reside in the State?
A. At the capital, Des Moines.
Q. How long have you known General Belknap?
A. I cannot say exactly. I should think eight or ten years; perhaps longer.
Q. Do you know what his general character is in the State of Iowa?
A. I think I do.
Q. What is it; good or bad?
A. His reputation is good, and unimpeached until the matter now under consideration by the Senate.
No cross-examination.

Mr. CARPENTER. Now, Mr. President, we have completed all the testimony that in our opinion as counsel we can properly and safely introduce until Mr. Evans is sworn. We now repeat the request that the court adjourn for a reasonable time to enable Mr. Evans to be present.

Mr. Manager McMAHON. We certainly renew our objections, Mr. President, to a continuance without a compliance with the rule, or, if not the rule, a rule that ought to be established by the Senate, that the materiality or pertinency of the testimony expected be submitted to the Senate. The question has been argued.

Mr. BLACK. Do you mean to say that you want us to make this statement on oath?

Mr. Manager McMAHON. The Senator from Vermont put a question awhile ago which indicated the idea.

Mr. SHERMAN. I ask what is the probability of getting Mr. Evans here and when?

Mr. Manager McMAHON. About seven days, I should judge from what has been said. I may be wrong about that; but he is the other side of Fort Reno, and I understand that the commander at Fort Reno is here and says that when these streams get up they stay up for three or four days. The railroad is torn up and the stages cannot get through.

Mr. SHERMAN. I should like to know whether General Belknap or his counsel had any opportunity to cross-examine the witness Evans when he was examined before the committee of the House.

Mr. CARPENTER. Of course not.

Mr. Manager McMAHON. I think not.

Mr. ROBERTSON. I move that the Senate sitting as a court of impeachment adjourn.

Mr. CARPENTER. Will not the Senator withdraw that for a moment?

Mr. ROBERTSON. I withdraw the motion.

Mr. CARPENTER. Mr. President and Senators, we ask leave to file, in support of a motion for postponement of this trial to some reasonable time, the following affidavit:

In United States Senate sitting as a court of impeachment.

THE UNITED STATES }
vs.
WILLIAM W. BELKNAP. }

DISTRICT OF COLUMBIA, *ss.*:

W. W. Belknap, being first duly sworn on oath, says that he has stated to his counsel, Hon. J. S. Black, Montgomery Blair, and Matt. H. Carpenter, what he expects to prove by John S. Evans, and after such statement is advised by his said counsel, and verily believes, that the testimony of said Evans is material and necessary for his defense in this cause, the said Evans being the same person upon whose appointment the articles of impeachment are based; that said affiant is informed and believes that said Evans is *en route* for Washington and detained by high water obstructing the roads, but that he will be in as soon as he can get here, and this application for postponement of the trial is made in good faith, and not for delay.

WM. W. BELKNAP.

Subscribed and sworn to before me this 12th day of July, A. D. 1876.
W. J. McDONALD,
Chief Clerk Senate.

Mr. Manager McMAHON. The objection has been fully stated, and we only rise now to enter it formally here.

Mr. EDMUNDS. May I ask the Chair what the pending question is if it is in order to make an inquiry?

The PRESIDENT *pro tempore*. Counsel on the part of the respondent have presented an affidavit and counsel have asked a postponement in accordance therewith. There is no formal motion.

Mr. EDMUNDS. I ask that the motion for postponement be reduced to writing, if it is in order to make such a request.

The PRESIDENT *pro tempore*. The counsel will reduce their motion to writing as required.

Mr. CONKLING. I should like to inquire of somebody the date when Evans's name was furnished to the appropriate authorities to be summoned as a witness.

Mr. Manager HOAR. Mr. President, I think I ought to state a fact which perhaps will be considered as favorable by the counsel for the defendant, but I will state what I am informed by the Sergeant at-Arms. I understand that Evans has actually been in attendance before the Senate, in obedience to the subpœna, if it were a subpœna, or to the telegraphic information that a subpœna had issued.

Mr. CONKLING. When was that?

Mr. Manager HOAR. I am not able to say; the Sergeant-at-Arms must give the information. I suppose that rather strengthens than weakens the claim of the defense.

Mr. CONKLING. My purpose was only to know what diligence they had observed in getting him summoned.

The PRESIDENT *pro tempore*. The return can be read which will show the fact that the Senator from New York has inquired about. The Secretary will read the return.

The Chief Clerk read as follows:

WASHINGTON, D. C., *July* 1, 1876.

I made service of the within subpœna, telgraphing the same to the within-named John S. Evans, at Fort Sill, Indian Territory, on the evening of the 22d day of June, 1876.

JNO. R. FRENCH,
Sergeant-at-Arms United States Senate.

Mr. CONKLING. Mr. President, my inquiry was simply when the respondent or his counsel took the proper steps to have this man summoned first; what date that was?

Mr. BLACK. I should say immediately after the time was fixed for the trial, as soon as it was possible for us to do so.

Mr. EDMUNDS. He is in the general list of witnesses ordered by the Senate.

Mr. BLACK. I understand the managers to say what I know to be true myself, that we have used all possible diligence to get this witness here; that there can be no objection to anything we ask for of which that is a sufficient ground.

Mr. Manager LAPHAM. Mr. President, I desire to make a single suggestion to the Senate upon the point of our objection that the

respondent in support of this application should be required to state what he expects to prove by this witness as a condition of postponement at this stage of the case. The respondent entered upon the trial without objection, upon the assumption that he was ready for trial. We are now in the midst of the trial; and a different rule, I submit, applies to this case from what would have been applicable if this application to postpone had been made before the trial commenced, upon the ground that Evans was not here in attendance. We have waited until the evidence on our side is completed, with the right to call this witness in case he comes, for we want him, I apprehend, much more than the defense. We have waited until the defense have exhausted in the main their evidence according to the suggestion of the counsel. Now they propose to stop this trial midway, and postpone the further hearing by reason of the absence of this witness, without any suggestion as to what they propose to prove in respect to this case by him. I submit that an application now, pending the trial, is upon an entirely different footing from an application made before the trial is entered upon on the supposition and statement that the party is not ready for trial and cannot properly commence it. The defendant did not ask to postpone this case on the ground that his witnesses were not here. He entered upon the trial on the 6th of the present month, the day assigned by the Senate for the trial, without objection that he was not prepared to go through with it. It was then the proper time, if his witnesses were not here, for him to have asked a postponement until their arrival. Having entered upon the trial, and having proceeded to the point we now have reached, I submit that the application to postpone is upon a different footing from what it would have been if made then.

Mr. CARPENTER. Mr. President, the reason for strictness against an application made to adjourn a cause after the trial of it has commenced in a court of law is that a jury is not a continuing institution. It is summoned for a term, and it never comes again. That particular body never comes a second time. That is the reason, and it is always stated so, why greater strictness is observed in regard to the postponement of a trial commenced before a jury. Everything that has been done must be lost. The testimony at the next term must be retaken, and the whole case proceed *de novo*. Here is a trial in the court of impeachment before the Senate of the United States, a body that cannot die as long as the Government lives, a continuous institution, that is not to lose the benefit of what has been done. The strict attention which has been paid by every Senator here to this testimony shows that it will never fade from his recollection. There is not the slightest fear that when the Senate shall postpone this hearing for a week or ten days to have this witness arrive, any of the testimony will be even faintly fading away at all in the minds of the Senate. The argument, therefore, made by the managers as to a *nisi prius* trial before a jury has no application.

Again, he says we ought to have applied for a continuance before we commenced the trial. I have already stated to the Senate, and now repeat, that when we made our application to have this witness subpœnaed he was not subpœnaed in our behalf, because the Government had subpœnaed him themselves. The Government were here with their case, and Mr. Evans was one of their witnesses, and we have heard from first to last that he was one of their main and principal witnesses, the thought of whose absence makes their grief overflow. We had no doubt that the managers were acting in good faith. We had no doubt that they would not proceed to the trial until they knew their chief witnesses were at command. We had no doubt that Mr. Evans would be here; and as soon as the fact came to our knowledge that he was not here, we even interrupted a witness on the stand to give notice that we should be unable to proceed with our evidence without him, and on an order moved by the Senator from Vermont, I think, a subpœna was actually issued, and was put into the hands of the Sergeant-at-Arms at once.

Mr. BAYARD. I should like to ask counsel are we to understand that the defendant has not summoned this witness at all, but has relied on the subpœna issued on the part of the prosecution?

Mr. CARPENTER. The fact is this: We applied in the first application made to have Evans subpœnaed as our witness, and supposed that he had been. After the trial commenced and we came to inquire into the matter, we ascertained that the officers had not subpœnaed him for the defendant because they had subpœnaed him for the prosecution.

Mr. Manager McMAHON. The order was simply this: That witnesses were to be summoned at the expense of the Government whom a certain committee said should be summoned. The respondent was at liberty to summon any one at his own expense.

Mr. BLACK. It was the 14th day of June that the list of witnesses summoned on the part of the accused was ordered to be transmitted to the Secretary of the Senate.

Mr. CARPENTER. This matter is very easily settled. Here is the application which we made for our witnesses and which the Senate ordered to be submitted to a committee named in the order, and on the first page of that list is the name of John S. Evans, and this came from the committee approved by the committee, signed by Senators FRELINGHUYSEN, THURMAN, and CHRISTIANCY, and it was received by the Clerk of the Senate on the 21st day of June. So we had a right to suppose that the witness was to be here, and we supposed that he was here. The very moment we ascertained that he was not here we did everything that we could to protect our rights in the matter.

Now I respectfully ask the following order:

"The respondent's counsel ask for an order that the further trial of this cause be postponed until notice be given by the Senate to the House of Representatives of the United States and to the respondent."

I put it in that form because he may be here by Saturday; he may not until Monday. I do not know anything about his whereabouts or when he will be here, except what has been stated in the Senate.

Mr. ROBERTSON. Is it known that he will be here at all?

Mr. CARPENTER. It has been stated several times in the Senate that telegrams have been received that he is on his way and is only staid in his coming by freshets which prevent travel, and that he will be here just as soon as he can. Precisely how high the tide is rising there or how broad the freshet is, I do not know. The testimony is that he is on his way and will get here as soon as he can. I therefore ask for that order in that form.

Mr. Manager JENKS. I will ask the counsel whether all the rest of their testimony has been given?

Mr. CARPENTER. There are two or three witnesses that we cannot properly call, as I have said, until we see Mr. Evans. Aside from that I think we have none; and yet if anything should occur in the mean time, we do not wish to be cut off by a formal close at this point.

The PRESIDENT *pro tempore*. The Secretary will report the order asked by the counsel.

The Chief Clerk read as follows:

The respondent's counsel ask for an order that the further trial of this cause be postponed until notice be given by the Senate to the House of Representatives of the United States and to the respondent.

The PRESIDENT *pro tempore*. The question is on the order just read.

Mr. CONKLING called for the yeas and nays, and they were ordered.

Mr. BAYARD. Pending that call I move that the Senate sitting as a court of impeachment do now adjourn.

The motion was agreed to; and (at five o'clock p. m.) the Senate sitting for the trial of the impeachment adjourned.

THURSDAY, *July* 13, 1876.

The PRESIDENT *pro tempore*. The legislative and executive business of the Senate will be suspended, and the Senate will proceed to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap.

The usual proclamation was made by the Sergeant-at-Arms.

The PRESIDENT *pro tempore*. The House of Representatives will be notified as usual.

Messrs. McMAHON, JENKS, LAPHAM, and HOAR, of the managers on the part of the House of Representatives, appeared and were conducted to the seats assigned them.

The respondent appeared with his counsel, Messrs. Blair, Black, and Carpenter.

The PRESIDENT *pro tempore*. The journal of yesterday's trial-session will be read.

Mr. SHERMAN. As the journal is really in printed form lying on our tables in the RECORD, I move to dispense with its reading.

Mr. Manager McMAHON. Mr. President, before that is done I notice in the RECORD that on an objection which was made and sustained by the Chair, the ruling of the Chair is not entered. It is in that place, Mr. Carpenter, where you offered the second item of General Sheridan's testimony. We objected on the ground that it had already been settled.

Mr. BAYARD. Mr. President, I should like to be informed whether the Sergeant-at-Arms has any facts in regard to the witness Evans, obtained since our adjournment yesterday?

The PRESIDENT *pro tempore*. The Chair is just informed that he has, and will submit them. They are reduced to writing, and the Chair will submit the paper as soon as the minutes are disposed of. Counsel are agreeing on some difference.

Mr. Manager McMAHON. On page 17 of the RECORD of to-day as put before us here, we find this:

Mr. CARPENTER. Now I call attention—it need not be rewritten or copied, of course—to the stipulation on page 15 of the IMPEACHMENT RECORD, of three points of fact submitted.

Mr. Manager McMAHON. Section 2 is not competent, and to that we have reserved the objection. That is:

"II. That in regard to all the applications made for leave to sell liquors at the military posts the matter was referred by the Secretary of War to him, and by him investigated and reported on, and his report in all cases was adopted by the Secretary of War."

On this we make the point that the record must speak for itself, which is the question already made and settled; and we put in the objection now to that particular matter.

The President nodded but said nothing, and the reporter fails to have the sustaining of the objection noted.

The PRESIDENT *pro tempore*. The Chair sustained the objection.

Mr. Manager McMAHON. The RECORD does not show that the objection was sustained.

The PRESIDENT *pro tempore*. It will be corrected in that particular. Shall the further reading of the minutes be dispensed with? The Chair hears no objection.

The Senate is ready to proceed with the trial. Before considering the pending proposition the Chair will lay before the Senate a communication from the Sergeant-at-Arms, which will be read by the Secretary.

The Chief Clerk read as follows:

SENATE OF THE UNITED STATES, OFFICE OF THE SERGEANT-AT-ARMS,
Washington, July 13, 1876.

SIR: Permit me to communicate through you to the Senate the facts in relation to the summoning of John S. Evans as a witness in the impeachment trial, and as to his absence so far as they are known to me.

I first summoned John S. Evans as a witness at the request of the managers, and by telegraph, April 22. Mr. Evans in response to this summons reported in Washington on May 3 and remained in attendance until the trial was adjourned to July 6. He was then excused, not discharged, by the managers until July 6

John S Evans was summoned the second time and on this occasion in behalf of respondent, and by telegram June 22, the receipt of which he acknowledged next day. Believing that his response in person to the first summons gave legal effect to that summons although the same was by telegraph, and that therefore an attachment could issue upon that summons if he should fail to appear upon the 6th. I judged it a wise economy to save the expense of a deputy's journey to Fort Sill with the second, and indeed the Senate will believe it was quite an absolute necessity when they learn that thus far in executing the orders of this court and securing the attendance of witnesses, I have been obliged to furnish every needed dollar from my own lean purse.

I learn through Mr. Fisher, the partner of Mr. Evans, by several telegrams from Mr. Shearcroft, Mr. Evans's book-keeper at Fort Sill, and by telegram from one of the officers stationed at that fort, that Mr. Evans, about the middle of the first week of July, started for Washington, by Fort Reno, which would give him two hundred miles of staging before reaching railroad at Wichita, Kansas; and I farther learn that that route within the past ten days has been subjected to unusual floods so as to greatly interrupt the passage of stages. Between Fort Sill and Wichita there is no line of telegraph.

I have men at Wichita, Fort Sill, and Saint Louis, to hurry Mr. Evans toward Washington if he should appear at either point.

Very respectfully,

JOHN R FRENCH,
Sergeant-at-Arms, Senate United States.

To the Hon. T. W. FERRY,
President of the Senate.

Mr. CARPENTER. I have a telegram from General McDowell wishing to make a correction of a single word omitted by mistake in the printing of his testimony, and I will ask to have the telegram read.

Mr. Manager McMAHON. That has been agreed to. We have a duplicate copy of the dispatch.

The PRESIDENT *pro tempore*. The dispatch will be read.

The Chief Clerk read as follows:

NEW YORK, *July* 10, 1876.

To Mr. CARPENTER,
Of counsel for General Belknap, Washington, D. C.:

In line 43, page 126, record of impeachment trial, next after the words "except so far as" and before the word "subletting," the word "forbidding" is omitted and the lack of it makes the answer absurd. May not this obvious correction be made without my having to turn back and come in person before the court? Have telegraphed Manager McMAHON. Please see him.

IRWIN McDOWELL,
Major-General.

The PRESIDENT *pro tempore*. Is there objection to this correction? The Chair hears none, and the correction will be made.

Mr. WHYTE. Before voting on the pending order I desire to propound an inquiry to counsel.

The PRESIDENT *pro tempore*. The inquiry of the Senator from Maryland will be read.

The Chief Clerk read as follows:

Do the counsel for the respondent decline to state for the information of the Senate what they expect to prove by the absent witness, John S. Evans?

Mr. THURMAN. Mr. President, it seems obvious from the statement we have heard from the Sergeant-at-Arms that this witness may be here any day. I move that the court adjourn until to-morrow.

The motion was not agreed to.

Mr. BAYARD. I propose an order which I send to the Chair.

The PRESIDENT *pro tempore*. The Senator from Maryland has propounded a question to counsel which has been read. The question of the Senator from Delaware will be read.

Mr. WHYTE. Mr. President, I ask that either a response be made to that inquiry of mine or a refusal noted.

Mr. SHERMAN. Let the interrogatory be read again.

The PRESIDENT *pro tempore*. The interrogatory of the Senator from Maryland will be read.

The Chief Clerk read as follows:

Do the counsel for the respondent decline to state for the information of the Senate what they expect to prove by the absent witness, John S. Evans?

Mr. BAYARD. If it will not interfere with the intelligible reply of counsel, I ask that the order I have sent up may be read for information.

The PRESIDENT *pro tempore*. The Secretary will report it for information.

The Chief Clerk read as follows:

That as a condition precedent to the order for postponement of this trial asked for on the 12th instant by the respondent, it is

Ordered, That the respondent inform the Senate what in substance he proposes to prove by John S. Evans, the witness on the ground of whose absence postponement is asked.

Mr. CARPENTER. Mr. President and Senators, I desire in the first place to enter a respectful protest against being compelled in a criminal case to state what we expect to prove by a witness. I do that, not for its importance in this case so much as I hold that every lawyer defending a person accused in any court owes it to his profession to stand by the regular practice, and I understand that to be the regular practice almost without exception, that where a defendant in a criminal case is not in fault as to the subpœnaing of a witness he is not compellable to state what he expects to prove by that witness.

In this case, however, one or two things I may state. In the first place we expect to prove by Mr. Evans one reason why he was not appointed when he first applied for this position, and that was that he intended to form a partnership with Durfee, whose character we shall show as a business man not to have been good, and that that was one important reason why he was not appointed at first.

In the next place, let me say that Mr. Evans is the man upon whose appointment these articles rest. We have never examined him nor had an opportunity to do so. He has sworn twice before a committee of the House, and the testimony presented by the managers is quite voluminous in manuscript. We have never read it; at least I have never read it; and I never supposed we should be called upon to read it, because we had the assurance of the Government that Mr. Evans was to be here. It seems now, from the statement of the Sergeant-at-Arms, that Mr. Evans was here and was released temporarily by the managers themselves without consultation with us. Our witness has been subpœnaed by the order of the Senate, has been here, has been discharged or released temporarily by the opposite party without consultation with us, and we desire to call and examine him.

Now we are asked, "Will you state what you expect to prove by him?" We cannot, because we do not know what he will swear to in regard to certain points. And, sir, in a trial like this where every word we utter goes upon the record to be called back in the summing up of this case to show that we were mistaken about what the witness would swear, we should be guarded and prudent. We know this man Evans has had intimate knowledge of the management of that tradership from first to last, for he has been the trader. We know from glancing through certain other testimony and from certain other facts within our knowledge that he must have knowledge of certain subjects which we think if he would swear one way will be important to us; if he would swear the other way it might not be so beneficial to us. We think he will swear in our favor; and yet we do not know what he will swear; and therefore we do not know what we expect to prove by him.

Mr. THURMAN. Mr. President, I suggest to the Senate that we can lose no time whatever by adjourning until to-morrow. The river and harbor bill is ready to be taken up, and no time whatever will be lost. In the mean time this witness may arrive. I renew my motion that the court adjourn until to-morrow.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from Ohio.

Mr. CARPENTER. If the Senator will excuse me a moment, on consultation with my client, I am informed that I have put the case a little too strong as to Durfee's bad character. That is not the point; but there were other objections to Mr. Durfee's being appointed, not touching his character as a business man, and I wish to correct that statement right on the spot.

The PRESIDENT *pro tempore*. The Senator from Ohio moves that the Senate sitting for the trial of the impeachment adjourn.

The motion was agreed to; there being on a division—ayes 26, nays 13; and (at twelve o'clock and twenty-five minutes p. m.) the Senate sitting for the trial of the impeachment adjourned.

FRIDAY, *July* 14, 1876.

The PRESIDENT *pro tempore*. Legislative and executive business will be suspended, and the Senate will now proceed to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

The PRESIDENT *pro tempore*. The House of Representatives will be notified as usual.

Messrs. McMAHON, JENKS, and LAPHAM, of the managers on the part of the House of Representatives, appeared and were conducted to the seats assigned them.

The respondent appeared with his counsel, Messrs. Blair, Black, and Carpenter.

The Secretary read the journal of proceedings of the Senate sitting yesterday for the trial of the impeachment of William W. Belknap.

The PRESIDENT *pro tempore*. The Senate is ready to proceed with the trial. The Secretary will read the application of counsel which is yet pending.

The Chief Clerk read as follows:

The respondent's counsel ask for an order that the further trial of this cause be postponed until notice be given by the Senate to the House of Representatives of the United States and to the respondent.

Mr. CARPENTER. That order was submitted in that form simply as a matter of convenience, because these openings and adjournings

from day to day take so much of the time of the Senate. If the Senate will adjourn until Monday or until Tuesday or any day fixed, of course that is all we want. We want the testimony of this witness very much; we cannot do justice to the defense without it.

Mr. SHERMAN. I move that the court adjourn until Monday and then continue the trial, whatever that expression may imply.

The PRESIDENT *pro tempore*. The Senator from Ohio moves that the Senate sitting for the trial adjourn to Monday next.

Mr. SHERMAN. The trial then to go on.

The PRESIDENT *pro tempore*. The trial then to go on.

Mr. COCKRELL. I desire to ask if anything has been heard from the absent witness, Evans?

The PRESIDENT *pro tempore*. A communication has been placed in the hands of the Presiding Officer by the Sergeant-at-Arms which will be read by the Secretary.

The Chief Clerk read as follows:

The Sergeant-at-Arms was telegraphed from Wichita, Kansas, yesterday noon, in these words:

"No stages for several days; streams all impassable."

He has also a telegram this morning from one of his deputies looking for Evans, saying that he has reliable information as to Evans upon which he bases the belief that he will be in Washington by Tuesday next.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from Ohio that the Senate sitting in trial adjourn until Monday next; the trial then to proceed.

The motion was agreed to; and the Senate sitting for the trial of the impeachment adjourned until Monday next.

MONDAY, *July* 17, 1876.

The PRESIDENT *pro tempore*. The Senator from Kansas calls for the regular order. Legislative and executive business will be suspended, and the Senate will proceed to consider the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

The PRESIDENT *pro tempore*. The House of Representatives will be notified as usual.

Messrs. LYNDE, MCMAHON, JENKS, and LAPHAM, of the managers on the part of the House of Representatives, appeared and were conducted to the seats assigned them.

The respondent appeared with his counsel, Messrs. Blair, Black, and Carpenter.

The Secretary read the journal of the proceedings of the Senate sitting on Friday last for the trial of the impeachment.

The PRESIDENT *pro tempore*. The Senate is ready to proceed with the trial.

Mr. CARPENTER. Mr. President and Senators, I understand from the Sergeant-at-Arms that he learns from a deputy of his who is with Mr. Evans that he is on his way and will be here to-morrow evening; that he lost by an accident on the railroad about twenty-four hours in his passage or he would have been here that much quicker. The Senate having indulged us two or three days to get this testimony. I take it now, when we have a very good assurance that he will be here to-morrow night, it will give us until Wednesday morning for the purpose of having the witness here.

Mr. CONKLING. Is the dispatch there?

The PRESIDENT *pro tempore*. The Chair will submit to the Senate a communication from the Sergeant-at-Arms.

The Secretary read as follows:

SENATE OF THE UNITED STATES,
OFFICE OF THE SERGEANT-AT-ARMS,
Washington, July 17, 1876.

To Hon. T. W. FERRY,
President of the Senate.

SIR: John S. Evans came out of the Indian Territory by the first stage for several days on Friday night. Saturday morning at four o'clock he took the cars at Wichita, Kansas, for Washington. By accident he was delayed twenty-four hours on the Atchison, Topeka and Santa Fé road, so that he did not make Saint Louis until this morning. Without further accident Mr. Evans will reach Washington Tuesday evening.

Very respectfully,

JOHN R. FRENCH,
Sergeant-at-Arms.

Mr. CONKLING. May I inquire whether there is a dispatch from Saint Louis?

The PRESIDENT *pro tempore*. The Secretary will read the dispatch from the Sergeant-at-Arms's deputy.

The Secretary read as follows:

SAINT LOUIS, MO., *July* 17.
(Received at 9.46 a. m.)

To Hon. JOHN R. FRENCH,
Sergeant-at-Arms, Senate, Washington, D. C.:

Telegram received. Evans arrived. We leave for Washington this morning, via Vandalia.

W. S. DODGE.

Mr. MORTON. I desire to inquire whether there is any affidavit or statement on file showing what is expected to be proved by this witness, to show the materiality of his testimony.

The PRESIDENT *pro tempore*. The Secretary will report the affidavit made on a prior day.

The Secretary read as follows:

In United States Senate sitting as a court of impeachment.

THE UNITED STATES }
vs.
WILLIAM W. BELKNAP. }

DISTRICT OF COLUMBIA, *ss:*

W. W. Belknap, being first duly sworn, on oath says that he has stated to his counsel, Hon. J. S. Black, Montgomery Blair, and Matt. H. Carpenter, what he expects to prove by John E. Evans, and after such statement is advised by his said counsel, and verily believes, that the testimony of said Evans is material and necessary for his defense in this cause, the said Evans being the same person upon whose appointment the articles of impeachment are based; that said affiant is informed and believes that said Evans is *en route* for Washington and detained by high water obstructing the roads, but that he will be in as soon as he can get here, and this application for postponement of the trial is made in good faith, and not for delay.

WM. W. BELKNAP.

Subscribed and sworn to before me this 12th day of July, A. D. 1876.

W. J. MCDONALD,
Chief Clerk Senate.

Mr. EDMUNDS. Mr. President, I should like to hear the order read on which the last adjournment took place.

The PRESIDENT *pro tempore*. It will be read.

The Secretary read as follows from the journal of Friday last:

On motion of Mr. SHERMAN,

Ordered, That when the Senate sitting for the trial of impeachment adjourns it be till Monday next, and that the trial then proceed.

Mr. EDMUNDS. Mr. President, I move that the counsel have leave to examine Evans at any stage when he arrives, and that we go on under the order as it stands.

The PRESIDENT *pro tempore*. The Senator from Vermont moves that counsel have leave to examine the witness at any time during the trial.

Mr. CONKLING. I suggest that that order ought to be reduced to writing. It involves particulars which we ought to consider.

The PRESIDENT *pro tempore*. The Senator from Vermont will reduce his motion to writing.

Mr. CARPENTER. Will the Senate allow me to say, in that connection, that we want to examine two or three witnesses, at least we expect to do so, after examining Mr. Evans? The whole examination of the witnesses after Mr. Evans arrives, on our part, I do not think will exceed three hours; but it is impossible for us to know what witnesses precisely we wish to call until we do examine him, and we have no testimony that we can put in until we hear the testimony of Mr. Evans.

Mr. EDMUNDS's order was reduced to writing and read, as follows:

Ordered, That the respondent have leave to examine John S. Evans at any stage of the proceedings prior to the termination of the argument-in-chief, to any matter material to his defense.

Mr. CONKLING. Mr. President, may I inquire of somebody whether that order would give the managers the right to call witnesses in reply and the counsel for the respondent the right to examine witnesses other than John S. Evans?

Mr. EDMUNDS. It would not without special leave.

Mr. CONKLING. Debate, I believe, is not in order, Mr. President.

The PRESIDENT *pro tempore*. It is not.

Mr. WHYTE. I offer the following as a substitute for the order proposed by the Senator from Vermont.

The PRESIDENT *pro tempore*. The substitute of the Senator from Maryland will be read.

The Secretary read as follows:

Ordered, That the Senate sitting in this trial adjourn until Wednesday, the 19th instant.

Mr. EDMUNDS. Is that in order as a substitute?

Mr. CONKLING. It is in order to adjourn.

Mr. EDMUNDS. So it is, but it is not in order as a substitute.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from Maryland, [Mr. WHYTE.]

The order was agreed to; and the Senate sitting for the trial of the impeachment adjourned until Wednesday, the 19th instant.

WEDNESDAY, *July* 19, 1876.

The PRESIDENT *pro tempore*. Legislative and executive business will now be suspended and the Senate will proceed to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

The PRESIDENT *pro tempore*. The House of Representatives will be notified as usual.

Messrs. LORD, LYNDE, MCMAHON, JENKS, and LAPHAM, of the managers on the part of the House of Representatives, appeared and were conducted to the seats assigned them.

The respondent appeared with his counsel, Messrs. Blair, Black, and Carpenter.

The Secretary read the journal of proceedings of the Senate sitting on Monday last for the trial of the impeachment.

The PRESIDENT *pro tempore*. The Senate is now ready to proceed with the trial.

Mr. CARPENTER. We propose to call John S. Evans. We understand he is here.

JOHN S. EVANS was called and took the stand.

Mr. CARPENTER. Mr. President, I desire to say to the managers that Mr. John S. Evans is now upon the stand. If they wish to examine him as a witness on the part of the prosecution, we make no objection to their doing so. If they do not, we give them notice that we shall insist on their being held to a proper cross-examination.

Mr. Manager McMAHON. Mr. President, we desire to state to the Senate that we shall claim the right to call out on cross-examination whatever is legitimate and proper in this case. I think, after having waited for nearly a whole week for the witness to come to accommodate the defense, that the Senate will endeavor to expedite matters by enabling us to put our questions to the witness upon cross-examination with the full privilege of the gentlemen in rebutting to ask him to explain all those matters about which we may inquire, which will make one examination answer all the purposes of this case, whereas if we now examine him the gentlemen on their side will have a right only to cross-examine him as to what we examined into, and then they must put him on the stand, we cross-examine him, and so on, making really a double examination, and upon the good sense of the Senate on that question we rely now. The gentlemen may examine Mr. Evans.

Mr. CARPENTER. Mr. President and Senators, it will be recollected that the manager stated to the Senate that Mr. Evans was one of his most important witnesses. When he closed his case, he closed it reserving the right to call Mr. Evans if he should appear at any time during the trial. Mr. Evans is now present. We waive all objection to his being examined in chief on the part of the Government if they wish to examine him. If they do not, we shall insist, as far as we can insist, that when they come to the cross-examination they shall be restricted to the proper rules of cross-examination.

Mr. CONKLING. Mr. President, to avoid misunderstanding and save time hereafter I offer the order which I send to the Chair.

The Secretary read as follows:

Ordered, That the managers proceed to examine the witness Evans in chief; or, should they decline to do so, the respondent may proceed to examine the witness in chief, with the right of the managers to cross-examine him like any other witness.

The PRESIDENT *pro tempore*. The question is on the order proposed by the Senator from New York.

The order was agreed to.

The PRESIDENT *pro tempore*. The managers will take the witness.

JOHN S. EVANS sworn and examined.

By Mr. Manager McMAHON:

Question. Where do you reside now?

Answer. Fort Sill, Indian Territory.

Q. Are you the post-trader at that point?

A. I am not now. I am still there, not having turned over my business. I have been removed and another party has been appointed.

Q. Who is your successor?

A. Messrs. Rice and Byers, Saint Louis, Missouri.

Q. How long have they been there?

A. They are not there at all. I do not turn over the business until the 15th of August. They take possession at that time.

Q. That is under an order of the 6th of March last, I believe. How long had you been post-trader at Fort Sill prior to your removal?

A. Since the establishment of the post, in 1869, I think.

Q. You derived your original appointment from whom?

A. On the recommendation of the officers I was appointed by the department commander.

Q. Who was he at that time?

A. General Schofield, I think.

Q. Where were you when the law of July, 1870, was passed?

A. I was at Fort Sill in 1870.

Q. How soon after the law was changed was it that you came to Washington City?

A. I beg pardon. I was not there when the law was changed. I came to Washington before the law was changed.

Q. Whose recommendations did you bring with you for appointment under the new law?

A. Every officer of the post, indorsed by the post commander.

Q. When did you first lay those recommendations before the Secretary of War?

A. I do not remember.

Q. How soon before or after the law passed?

A. I cannot remember. The Secretary of War left the city and went West a short time after the change of the law, and I do not remember whether I placed these documents before him before his leaving or after his return.

Q. How long was the Secretary of War gone at that time?

A. I think some three months; I do not remember exactly, but I suppose two or three months, perhaps four.

Q. Where did you stay in the mean time?

A. I was here part of the time and among my friends in the East; no place in particular.

Q. Were you expecting the return of the Secretary of War?

A. I met the Secretary of War. I went to Keokuk while he was absent from here.

Q. About what time was it you met him at Keokuk?

A. I am not able to say.

Q. Do you remember the month?

A. I do not.

Q. What did you go to see him for at Keokuk?

A. I went to see him in reference to this appointment at Fort Sill.

Q. Was that the first occasion you had ever seen the Secretary of War?

A. It was the first time I had ever met him.

Q. You do not know how soon he saw the paper that you filed with the Department?

A. I do not.

Q. State all the conversation that passed between you and the Secretary of War at Keokuk in regard to this appointment.

A. It was very brief indeed. I was introduced by Mr. Peck, an acquaintance of mine and also an acquaintance of General Belknap.

Q. What did you say to him?

A. Mr. Peck, if my recollection serves me, told him I was an applicant for the appointment at Fort Sill. He said to me that he was not attending to any of that business here; he would attend to it when he returned to Washington; he was off on a pleasure trip. That was about the sum and substance of the conversation.

Q. About when was that, do you know?

A. I cannot tell. It was probably after June of that year.

Q. Do you remember when you got back to Washington City; what month it was?

A. I do not. I returned East and remained here until his return—remained partly in New York and partly in Philadelphia.

Q. Did you explain to him at Keokuk, Iowa, that you were already the post-trader and had been there, and explain——

Mr. CARPENTER. Ask him what the conversation was.

Mr. Manager McMAHON. Just state the whole conversation.

The WITNESS. I do not think I made any mention of being an applicant here. Mr. Peck merely said that I was an applicant for this place. I do not remember what his remarks were, but they were very brief. The Secretary had very few words to say on the subject.

Q. (By Mr. Manager McMAHON.) Where did you go to from Keokuk next?

A. I returned East.

Q. How soon did you come back to Washington City?

A. I do not think I returned here until the return of the Secretary.

Q. How did you get information of the return of the Secretary?

A. I am not positive; probably through the papers; but I do not remember.

Q. When you got here state whether you found the Secretary here or whether he was not yet home.

A. That I am not able to say.

Q. You have no recollection on that point?

A. No recollection whatever.

Q. You did meet the Secretary afterward, personally?

A. I met him afterward.

Q. How many times?

A. But once.

Q. State who introduced you and where this took place. Give all the conversation between you.

A. My introduction was so slight at Keokuk to the Secretary that I did not suppose he would know me. E. W. Rice of this city introduced me. I knew there were a great many applications for these positions. I did not suppose the Secretary would know me or remember me, and for that reason I thought it best to get some one.

Q. Did Rice introduce you personally, or did he see the Secretary in advance, or give you a letter?

A. He saw the Secretary in advance.

Q. Did any conversation pass between you and the Secretary in the presence of General Rice or anybody else?

A. No, sir.

Q. State what the conversation was between you and the Secretary when you went to see him.

A. I called upon the Secretary and made myself known to him, and he appeared to recognize me when I came in. I told him I was an applicant for this position and that my papers were before him. I do not remember at what time I placed my papers before him, but they were in his possession at that time. I called his attention to that fact. He said they were, and they were in every way satisfactory, that is my recollection of his remark, but that he had already made the appointment or had promised it to another party.

Q. What other party was that?

A. Afterward I found it was Mr. Marsh.

Q. Did he mention the name of the party?

A. I do not recollect that he did at that time.

Q. How did you discover who the party was?

A. Through Mr. Belknap, Secretary of War. That was subsequent.

Q. Now give all the conversations that passed between you and the Secretary of War, and all arguments, if any, that you adduced to him to give you the nomination.

Mr. CARPENTER. State all the conversations.

Mr. Manager McMAHON. That is what I want.

The WITNESS. The Secretary recognized me as an applicant when I introduced myself and told him who I was. He said he remembered me as having met me at Keokuk. Of course I told him my

business, and he said my documents were every way satisfactory, but that he had already made the appointment or promised the appointment to another party, and that I might possibly be able to make some arrangement with that party; he did not know whether he wanted to go there particularly or not; that he would be in the city and I could see him. That was about the substance of the matter. He said that my papers were satisfactory. I told him how I was situated there, that I had a large investment, and what the consequences would be to me if I did not receive the appointment. I should have to move my goods off the reservation and my buildings would be worthless. He said that he thought I could probably make some satisfactory arrangement with this party. I do not give this as the exact language.

Q. (By Mr. Manager McMAHON.) What was the remark he made—I understood you to state it a while ago—about this party not wanting to go out there?

A. I am not positive he said that, but that is my recollection, that he did not know whether this party would go himself or whether he wished to go there or not.

Q. When did he say this party would be in the city?

A. I will not say positively whether he said that night or not, but he asked me where I was stopping. I told him, and on the same evening or the following evening—I am not positive as to that—Mr. Marsh called upon me.

Q. You had a conversation with Mr. Marsh that evening about this matter. Did you come to any arrangement that evening?

A. I do not think we came to a positive arrangement. My impression is Mr. Marsh wished me to pay him, in the first place, $20,000 a year, saying that he had understood from good authority the post was a very valuable one and worth a great deal of money—I give this as my recollection—but I would not listen to that. I did not feel inclined to pay $20,000, and told him so. After considerable conversation he consented to have me appointed or to take the post in his name for $15,000 a year. On that basis we separated. I do not think I acceded to that at the time, but when I went to New York the next day in the same train with Mr. Marsh I met him and succeeded in securing the position from him at the rate of $12,000 a year.

Q. Was there not a contract drawn up between you?

A. Yes, sir.

Q. [Handing to the witness the agreement between himself and C. P. Marsh, heretofore produced in evidence.] Is this the paper that was signed by you?

A. [Examining.] That is my signature attached to that document.

Q. Look at the date of this; October 8, 1870, I believe?

A. Yes, sir; that is the date.

Q. Was that agreement executed on the day it bears date?

A. It was, to the best of my recollection.

Q. After the agreement was executed, what action did Mr. Marsh take, if any, to have you appointed?

A. It was fully understood that the appointment should be made out in my name between Mr. Marsh and myself.

Mr. CARPENTER. I suppose that is not competent.

Q. (By Mr. Manager McMAHON.) Have you the original appointment with you?

A. I have not.

Q. Who has it?

A. I think it is here. I think I left it with Mr. CLYMER'S committee.

Mr. CARPENTER (to the managers.) You read it in evidence.

Mr. Manager McMAHON. Yes, we have read it in evidence. (To the witness.) Do you remember who drew up that agreement?

A. I would remember the name of the gentleman if I heard it. It was Mr. Marsh's lawyer.

Q. (By Mr. CARPENTER.) Mr. Bartlett, was it not?

A. Yes; Bartlett.

Q. (By Mr. Manager McMAHON.) Did you at any time learn from the Secretary of War the name of the friend to whom this post had been promised?

A. I think he told me that night of our interview that it was Mr. Marsh.

Q. Did he state where he lived?

A. I think he did; New York City.

Q. When Mr. Marsh came to see you had you had any previous acquaintance with him or any knowledge of him?

A. I never had heard of the man before except through the Secretary of War.

Q. Were you hunting for him or did he find you?

A. He came to my hotel where I was stopping.

Q. Had you informed the Secretary of War of the name of the hotel at which you were stopping?

A. I think so.

Q. How many interviews did you ever have with the Secretary of War about this post-tradership matter?

A. One only; that was the first and last that I ever had with him.

Q. Of course you except from that the Keokuk interview?

A. Yes, sir.

Q. You met but once in Washington City?

A. But once on that business.

Q. When you were introduced at Keokuk state whether the name of the post for which you were an applicant was named by your friend who introduced you.

A. That I cannot say.

Q. State whether, when you came on to Washington City, you brought with you your application for this post, signed by the officers, or whether it was sent and mailed to you after you had left there.

A. I brought it on with me. I brought the papers with me.

Q. How soon did you file them in the War Department?

A. That I do not remember. As I stated before, I do not remember whether it was prior to the departure or after the return of the Secretary of War, but I think previous to his leaving the city.

Q. Go on and state whether under that contract, which we have put in evidence, the payments were made; and, if so, how frequently. State if any change was made in the amount, and why; and state how much in all you have paid to him.

A. I have a statement that I can submit here.

Mr. CARPENTER. That would not vary, I suppose, from Marsh's testimony about the payments.

Mr. Manager McMAHON. I think not. I want the statement, however, substantially. (To the witness.) Look through your statement and give us the amount you have paid altogether to Mr. Marsh, and about the sums, whether quarterly, semi-annually, or how?

A. I will state that a great many of these remittances were made as we could procure exchange. In that country we could not regularly meet our agreement. Our agreement was quarterly in advance. I find in September the first payment of $3,000. Then come a great many small payments.

Q. How many times did you pay $3,000 at one time in cash?

A. We never at one time paid more than $3,000.

Q. I understand that; but how regularly did you pay $3,000 at one time?

A. There appear here seven items of $3,000.

Q. For how long a time was the payment of $3,000 made quarterly?

A. I cannot tell distinctly about that. This matter was taken right off my books as the payments were made. I find we frequently made payments as we could get exchange. We did not make payments in full, because we could not secure exchange. Consequently the books show exactly the payments as made.

Q. How much did you pay Mr. Marsh altogether?

A. The sum-total is $42,317.02.

Q. Up to what date did you make the payment?

A. September 30, 1875.

Q. That was the last payment?

A. The last payment.

Q. You paid in advance, I understand.

A. I was paying in advance.

Q. The last payment you say was the 30th of September, 1875; how much?

A. An item of $1,575.25.

Q. That was only the half of the payment; was it not?

A. Only half.

Q. When did you send him the other half of that payment?

A. October 11.

Q. How much did you send him October 11, 1875?

A. Fourteen hundred and twenty-one dollars and seventy-five cents, making the $3,000, I believe.

Q. When was this amount that you paid to him, $12,000 per annum, reduced and to what was it reduced?

A. I cannot tell by this statement. I think the twelve-thousand-dollar payment ran for a year and a half, or about that time; but I cannot tell exactly. In the statement it is not explained.

Q. Did you ever see the Secretary of War after you were here in October, 1870?

A. Yes, sir; I did.

Q. Upon how many occasions?

A. I recollect but once. I may have seen him oftener; I recollect only once.

Q. Did any conversation pass between you and him in regard to this matter?

A. Not any whatever; it was on a different subject entirely.

Q. A different matter?

A. Yes, sir.

Q. Did the Secretary of War ever address you any letter or any communication whatever inquiring into the fact as to whether you were paying Mr. Marsh any money?

A. He never did. I never had a line from him on the subject.

Q. Did any person claiming to be authorized by him ever make any inquiry of you upon that question?

A. They did not.

Q. Why did you continue to pay this money?

Mr. CARPENTER. He paid it under the contract.

The WITNESS. I made a contract to do so to hold my position.

Q. (By Mr. Manager McMAHON.) For what purpose did you keep paying the money?

A. To hold my position, of course.

Q. Had Mr. Marsh any capital ever invested in your concern?

A. He had not.

Q. This was no portion, then, of the profits of your concern coming to him on account of any capital or labor he had invested in it?

A. Not any; nothing of the kind.

Q. Through whom did you receive your appointment; do you remember? That is, did it come directly from the War Department or through some person else?

A. I think it came through Mr. Marsh.

Q. State through whom you addressed a communication to the Secretary of War when you desired any information or any favors?

A. As I recollect—I may be mistaken about it; I will not be positive—they went through Mr. Marsh.

Q. If you had a copy of your letter of appointment, would it not show?

A. I am at sea in regard to that.

Q. When you wanted any favors or held any communication with the Secretary of War in regard to matters at Fort Sill, state whether you communicated directly with the Secretary of War or whether you communicated through somebody else.

A. All such communications were addressed through Mr. Marsh, as far as I recollect. I never addressed a communication to the Secretary of War directly in my life that I recollect.

Q. You directed it to him?

A. I may be mistaken in regard to that; but that is my recollection.

Q. Are your books here, Mr. Evans?

A. They are.

Q. Is there any doubt about your having paid this $43,000?

A. My books are here to be examined. I made the copy from my books. It is an exact copy.

Mr. Manager McMAHON, (to the counsel for the respondent.) You may cross-examine, gentlemen.

Mr. SARGENT. I should like to know of the managers if they do not propose that the witness shall state fully his conversation with Marsh at the time the bargain was made by which Marsh was allowed this payment. If I understand his testimony, the Secretary of War stated that he had promised the appointment to Marsh; but as Marsh might not wish to go to the Indian Territory, he perhaps could make an arrangement with him; and that Marsh called on the witness at his hotel. It seems to me it would be interesting, perhaps important to the truth, to know what conversations he had with Marsh at that time in order to know if Marsh at that time stated that he had to divide this money with any person as an inducement why the payment should be larger than the amount the witness was willing to pay.

Mr. Manager McMAHON. I have no objection to that question.

Mr. CARPENTER. We do not regard such examinations as quite proper; it is a conversation between third persons; but we have no objection to make.

Q. (By Mr. Manager McMAHON.) Mr. Evans, state the conversation that took place between you and Mr. Marsh that preceded the making of the agreement and all your conversations from the time you left Washington until you finally consummated the agreement, that may shed any light on this contract. From the time that Marsh saw you at the hotel is what the Senator's question leads to.

A. Mr. Marsh came there and sent up his card, I recollect, to my room. I received him there, and the matter was broached without any delay, so far as I recollect. I stated to him the condition of our affairs there at Fort Sill.

Q. (By Mr. CARPENTER.) Tell what you stated to him.

A. I stated to him that myself and partner had an investment, or rather means and stock, amounting probably to $100,000. I think that our stock there at that time was fully $80,000. Whether that included our buildings or not I do not recollect, but that is my recollection. I stated to him that our investment was about $80,000, and it would be a great loss to us to be compelled to leave the post. I showed considerable anxiety to make some arrangement, I know, with Mr. Marsh. My idea is that I offered to make a partnership with him. My recollection is that I proposed to go into partnership with him or that I was willing to sell out to him; that I made the proposition to sell to him or asked him for a proposition to buy.

Q. That is, to buy your stock and buildings?

A. Yes, sir; I did not want to submit to a sacrifice. I told him I could not pay the amount. As I said before, my recollection is he wanted $20,000. I told him that was very exaggerated; that I could not pay any such amount, even with the monopoly of the trade; and when he submitted the proposition of $15,000 I still expostulated with him that I was not able to pay it, that the business did not justify it, and I did not think it would be right and just that I should pay such an amount. I may have consented to accept his proposition for $15,000; I think I did not, however; but there were a great many applications for that post and it was a matter of very serious importance to me that I should secure it, rather than submit to the sacrifice of being moved off the reservation, as I supposed would be the case should another party be appointed.

Q. (By Mr. Manager McMAHON.) In that connection you say that something was said about the monopoly of trade there. State fully what was said on that subject.

A. When I say monopoly I mean there was to be but one trader. I understood there was to be but one trader appointed at any post.

Q. From whom did you learn that fact?

A. It was general remark in the city. A large number of men in the same condition were here, and it was general talk among us.

Q. What did Mr. Marsh say in regard to this matter as to whether there was to be more than one at your post?

A. My recollection is he said there would be but one appointment made.

Q. That was the understanding?

A. That was the understanding. There was to be but one appointment at the post. As I say, I do not recollect whether I consented to pay the $15,000. At all events, Mr. Marsh said he was going to return to New York that evening, and I told him I should go there also, which I did. We went over in the same train. The next morning I happened to take up an Army paper and noticed that there was to be a removal of a portion of the troops from the post. I went to see Mr. Marsh during the morning and submitted that to him, and told him there was going to be a reduction of the force, and that I was not justified in paying such an amount; and we compromised on $12,000. Whether I suggested paying that in place of the $15,000 or whether he submitted it, I do not remember. I accepted it, and our contract was drawn up on those terms, at the rate of $12,000 a year, payable quarterly in advance.

Q. Had Mr. Marsh at this time actually the appointment or the simple promise of it?

A. It was my understanding that the appointment had not been made out; that the appointment would be made to him if we came to an agreement. I understood at that time there had been no appointments made under the new law. It was my understanding that there had been no appointment made at any post.

Q. There had then been no appointments as you understood?

A. That was my understanding at that time. I may be mistaken, however, about it. That is my recollection.

Q. Have you stated all now that passed between you and Marsh?

A. That is the substance of the interview, so far as I can recollect; I have not used the exact language. The interview with Mr. Marsh was probably two hours long. I cannot go into the details of the conversation.

By Mr. SARGENT:

Q. Did Marsh in either of those conversations tell what he was going to do with the money that he received from you?

A. He did not.

Q. Did he state whether he was to divide it with any person?

A. Not at all. Of course it was understood that it was for himself.

The PRESIDENT *pro tempore*. The question must be reduced to writing.

Mr. SARGENT. I suppose the reporter has the question.

Mr. Manager McMAHON. We are through with the witness for the present.

Mr. RANDOLPH. There is one question which I should like to ask the witness.

The PRESIDENT *pro tempore*. The Chair will observe that the Senator must reduce his question to writing. The rule requires questions by Senators to be reduced to writing.

Mr. RANDOLPH. I know the rule requires it, but I also know that the rule has not been kept, and inasmuch as this is the first time I have obtruded a question upon the court, I do not know why the exception should be made in my case.

The PRESIDENT *pro tempore*. The Chair will observe at this time that so far as questions have been put to witnesses by Senators the rule in the recollection of the Chair has been observed until this time, and the Chair called the attention of the Senator from California, who put a question just now without reducing it to writing, to the fact that the rule required it to be done. The question having been put and it having been reduced to writing, by calling the attention of the Senator to the rule the Chair did his duty. Heretofore no questions have been put to witnesses, as the Chair recollects, without having been first reduced to writing. Is there objection to the Senator from New Jersey asking a question of the witness?

Mr. EDMUNDS. Stand by the rule.

Mr. RANDOLPH. If there is no objection I should like the reporter to take my question down.

The PRESIDENT *pro tempore*. The reporter will take down the question.

Mr. RANDOLPH. The question is this: What amount of goods did Mr. Evans sell at Fort Sill during any one year pending this contract? That is the first question.

Mr. CARPENTER. The object of that question seems to be to show that he made an improvident contract with Marsh and paid him too much. I submit that that can have no materiality to this case. If the managers trace $500 home to Belknap in the form of a bribe, it is just as complete a case as $50,000. If he paid him an unreasonable bribe, it is no worse than to pay ten cents.

Mr. RANDOLPH. I am unfortunately placed to argue the question with the counsel——

The PRESIDENT *pro tempore*. Debate is not in order. The question will be put.

Mr. CARPENTER. We object to it.

Mr. RANDOLPH. I ask the opinion of the Senate upon the propriety of the question.

The PRESIDENT *pro tempore*. Shall this question be submitted to the witness?

The question was determined in the affirmative.

The PRESIDENT *pro tempore*. The reporter will read the question.

The reporter read the question, as follows:

Q. What amount of goods did you sell at Fort Sill during any one year, pending this contract?

A. This was a military appointment. I was doing an extensive business there in contracts for supplies. I should like to know whether the question applies to my Indian business, military business, or contracts, or all combined, or military business alone.

Mr. RANDOLPH. His business as post-trader. I do not know how many kinds of business he was engaged in.

Mr. CONKLING. Then the question I suggest should be, How much did you, as post-trader, sell?

Mr. RANDOLPH. Very well; let the question be put in that way.

The WITNESS. That I cannot answer. My business was all combined.

Mr. CARPENTER. I should like to suggest to Senators that possibly the cross-examination would bring out a great many facts which Senators want, and if they will give us leave first to cross-examine the witness it might reduce the number of questions Senators might wish to put themselves.

Mr. RANDOLPH. I have no objection to delaying my question.

Cross-examined by Mr. CARPENTER:

Q. You saw Mr. Belknap for the first time at Keokuk, Iowa?

A. I did.

Q. You said that you thought Secretary Belknap was absent from Washington in 1870 two or three months, or it might be four. Did you mean months or weeks?

A. Since I made that remark a while ago I think I was very much mistaken about the time.

Q. It was about three weeks?

A. Yes, probably it would be that time. I was on East here and the whole trip I got in my mind, and I was mistaken.

Q. You say you had no conversation with him whatever at Keokuk about Fort Sill?

A. Only that I mentioned the matter myself.

Q. You were merely introduced to him?

A. It was in the presence of three or four or half a dozen gentlemen.

Q. You next saw him in Washington?

A. I next saw him in Washington.

Q. And you had but one interview with him in regard to this appointment?

A. One interview only.

Q. That was in his office in Washington, in the War Department, I suppose?

A. It was at his dwelling-house.

Q. There you showed him your papers?

A. The papers were already in his possession.

Q. You said you thought they had been filed in the Department?

A. Yes, sir.

Q. In that conversation you say that he told you he had promised it or had appointed a friend of his to that place, and told you who it was?

A. Yes, sir; he did in the course of the conversation.

Q. Did you not then enter into a conversation with him in regard to the stock of goods you had and the value of the buildings you had on the premises?

A. I did. I laid the whole facts before him.

Q. Did you not ask him whether some arrangement for a partnership or something of that kind could not be made between you and Marsh?

A. I asked him whether he thought such an arrangement could be made, whether I could dispose of my interest there or form a partnership.

Q. Dispose of your interest or form a partnership?

A. Yes, sir.

Q. What did he say in reply?

A. He said he could not tell whether this gentleman would wish to go to the Territory; that I might possibly be able to make some arrangement.

Q. Did he use any persuasion with you to make an arrangement with Marsh?

A. Not any whatever.

Mr. Manager McMAHON. Ask what he said. That is not a fair question.

Mr. CARPENTER. It is calculated that way, for if so then follows what then did he say. (To the witness.) What did he say to you then about seeing Mr. Marsh? Did he ask you to see him?

A. The Secretary of War appeared to have some sympathy for me in the matter. He said he thought it was a pretty hard case that I should have to leave the reservation, but that the promise already had been made.

Q. By Mr. CARPENTER. Was not all that was said on the part of Mr. Belknap suggested with a view to help you to get rid of your goods to Marsh?

Mr. Manager McMAHON. I think the question ought to be, did he say anything to you so and so. I do not object to leading questions on cross-examination, but I do not want leading questions in regard to motives and inferences. I want the facts, and am entitled to have them in the proper way.

Q. (By Mr. CARPENTER.) Did he request you to go and see Mr. Marsh?

A. He did not. Mr. Marsh was not in the city, as I understood.

Q. Did he request you ever to see him on his behalf?

A. He did not.

Q. It was in reply to your asking him whether any arrangement for a partnership or for a sale of your stock could be made with this man that he told you this man would be in town and you could see him?

A. He said, "I do not know what arrangement you can make; you may possibly be able to arrange it," or, "I do not know what arrangement you can make; but this gentleman, Mr. Marsh, will be in the city"—whether he said that night or the night following I cannot remember—and I could see him. Then I probably asked him where I would meet him. I do not say I did.

Q. Did not Mr. Marsh tell you that he had come down there in consequence of having seen the Secretary of War and had been told by him that he must make some arrangement with you to save you from ruin or he would not appoint him?

A. I do not recollect what he said in coming there.

Q. Did he not explain the fact to be that he had come there in consequence of what the Secretary of War had told him?

A. That was my understanding. He came over there.

Q. In consequence of what the Secretary of War said to him?

A. Yes, sir.

Mr. CARPENTER. Mr. Marsh has sworn that the Secretary of War would not appoint him if he did not make some arrangement.

Mr. Manager McMAHON. Never mind stating what Mr. Marsh swore to. That is in the record.

Q. (By Mr. CARPENTER.) In that conversation which you had with Mr. Marsh I suppose you were trying to get as low a price and he as high a price as he could for the arrangement, was he not?

A. I was trying to make the best arrangement I could in my own interest.

Q. He was up to about the same thing in his, was he not?

A. That was my impression when I got through with him.

Q. In that conversation did Mr. Marsh say to you that he had to divide anything he got from you with anybody?

A. He never breathed anything of the kind; he never intimated it at all.

Q. When did you first ever hear that any such thing had been done?

A. I never heard it until this matter was brought to Washington. It was reported through the Army. I heard it spoken of, that that was the impression.

Q. I mean at what time did you have any knowledge that Marsh had paid the money?

Mr. Manager McMAHON. You did not ask for knowledge, but when he first heard of this division; and he is telling you he heard it rumored through the Army. Do not change bases.

Mr. CARPENTER. The manager can have me to enforce it as often as he pleases. (To the witness.) Did you ever hear it talked about in the Army prior to the article in the New York Tribune on the subject?

A. I do not know that I did. I think that originated it.

Q. (By Mr. CARPENTER.) You think it originated with that article?

A. I think so.

Q. What was your business at Fort Sill?

A. It was general merchandising; Army trade, Indian trade, contracting with the Government for supplies.

Q. What was the whole amount of your business at that point worth per annum in 1870?

A. I cannot tell.

Q. Give as near an estimate as you can.

A. I should suppose, probably, $150,000.

Q. Do you mean profits?

A. No, sir; I mean our trade; the quantity of goods sold. It may have exceeded that.

Q. Of that, how large a proportion was the tradership, the mere sales of stock to the soldiers and officers?

A. I should suppose, probably, about one-third, not to exceed $75,000. We had one year a large force. There is another little item I should mention. We were building a post there, and had a large number of citizen employés included in this estimate. I cannot give any idea; I suppose it exceeded $50,000.

Q. Was it through your position as post-trader there that you were enabled to run all these other branches of business?

A. I had an Indian license, which would have enabled me to have run outside of the military reserve; but it was a great advantage to be on the military reserve.

Q. It was a great advantage to you to be on the military reserve in regard to your other business than trader?

A. Yes, sir; it was.

Q. Did that enter largely into the sum you agreed to pay Mr. Marsh?

A. I do not understand you.

Q. Did that consideration enter into the fixing of the sum with him that you were willing to pay to Marsh?

A. It did.

Q. It was not merely, then, for the profits you could make as trader, but the advantages that would result to you in general business there?

A. That was the idea. I merely wish to state that I never would

have consented to have paid any such amount of money as military trader alone. My business in that capacity never justified it.

Q. It was your other business in connection with it that induced you to pay so large a sum?

A. Of course it was.

Q. And you never understood from Marsh, in any of the negotiations with him about it, that he had to divide a cent of the money with any human being?

A. I never heard anything of the kind intimated.

Q. Who was with you when you called on General Belknap in Keokuk?

A. Mr. Peck, of the firm of Durfee & Peck.

Q. How many posts had Durfee & Peck at that time?

A. My recollection is that they had three posts; probably more.

Q. They had three posts under the old law, had they?

A. I do not say under the old law. My impression is they had more than that under the old law. Under the new law my impression is they had but three. I am not positive about it.

Q. At the time you called at Keokuk to see General Belknap how many posts did that firm have?

A. I cannot say; my impression is three or four.

Q. When you subsequently applied to the Secretary of War in Washington were you contemplating a partnership with Mr. Durfee?

A. I had at one time contemplated a partnership with Mr. Durfee, and made my application with his name attached to the application.

Q. [Handing a paper.] Is that a copy of the application you made?

A. It is. It was on file here, in the War Department. The partnership had not been agreed on at that time. It was contemplated, however.

Q. At that time did you not understand Mr. Belknap to say that one reason why he could not appoint you was that you were in partnership with Durfee?

A. There is an impression in my mind that he refused to appoint Mr. Durfee to any other position; whether he told me that personally himself or whether Mr. Marsh told me that, I do not remember. I probably stated to Mr. Marsh that this application had been made.

Q. Did not Mr. Belknap tell you distinctly that he would not appoint you in connection with Durfee?

A. I do not recollect that he ever said so distinctly, but I have the impression that I was told, probably by the Secretary, that Mr. Durfee could not have any further appointment.

Q. Then you say it is your impression that General Belknap did tell you that Mr. Durfee could not have or be interested in any more appointments?

A. It was either himself or Mr. Marsh; I cannot recollect which.

Q. I understand you to say that it was the general understanding all around that there was to be but one trader at any military post under the new law?

A. That was my understanding.

Q. What favors did you ever apply for of the Secretary of War through Mr. Marsh?

A. An application was made regarding the limits of the reservation.

Q. Enlarging the reservation?

A. It was understood between Mr. Marsh and myself that the reservation should be extended.

Q. One application was in regard to an enlargement of the reservation?

A. One was. I think that I communicated to Mr. Marsh regarding that matter, that the reservation had not been extended to the limit that was understood.

Q. What did you next hear from that application?

A. I have no recollection.

Q. Let me see if I cannot recall your recollection. Do you not remember that you received a letter from the War Office informing you that the recommendation of General Pope had been adopted enlarging the reservation as he recommended?

A. I have only an indistinct recollection of it, nothing very definite.

Q. Did you ever hear anything from Mr. Marsh about it?

A. I do not remember that.

Q. Was your letter addressed to Marsh or addressed to the Secretary of War and sent through Marsh?

A. It was addressed to Mr. Marsh. I do not recollect ever having addressed a communication to the Secretary of War about it. I do not recollect sending any such communication, but very likely I did.

Q. What other application did you ever make to the Secretary of War?

A. There was an application made for the introduction of liquors there for the use of the officers at the post. I am not positive whether that was sent directly or through Mr. Marsh; whether it went through the regular channels or not.

Q. [Handing papers to the witness.] Look at that and it will probably refresh your recollection.

A. [After examining.] That is correct; I remember.

Q. You addressed that directly to the Secretary of War?

A. To the Secretary of War.

Q. What response did you receive to that?

A. The permission was granted.

Q. Was it granted through the regular military channels?

A. Through the regular military channels.

Q. Did you ever ask any other favor as a post-trader?

A. I do not recollect of any.

Q. Then the only two you remember was one in regard to this liquor-selling business and the other in regard to the extension of the reservation?

A. That is my recollection.

Q. Did you ever have any other favor or indulgence of any kind from the Secretary of War which was not common to all traders?

A. I do not recollect any.

Q. What was your situation there in regard to protection? Had you any other protection than all post-traders had?

A. None other whatever.

Q. And the only privileges you enjoyed there were those which pertained to your appointment as post-trader?

A. As I understood, all orders sent there were sent to all traders through the country.

Q. Can you describe what the regular military channels are?

A. From the adjutant of the post up through all the grades of officers to the post-commander, to the division commander, and the division headquarters, and then to Washington, to the Adjutant-General of the Army.

Q. These applications are seen and read at all these headquarters?

A. Through all these channels.

Mr. Manager McMAHON. We object to proving by this witness or any other that any communication went through the regular military channels without producing the records to show the indorsements on them and that they did so pass.

Mr. CARPENTER. Mr. President, we offer now a certified copy of Mr. Evans's letter asking permission to sell liquor, &c., and all the references of it that were made from that post clear up to the Secretary of War, which are the exhibits A, B, C, D, E, and F, in the documents in my hand, except that we shall not ask the Clerk to read one map which probably he could not do intelligibly.

The Chief Clerk read as follows:

FORT SILL, INDIAN TERRITORY,
November 30, 1872.

The Hon. SECRETARY OF WAR,
Washington, D. C.:

Owing to the isolated position of this post and the difficulties attending the shipment of merchandise, it is inconvenient and almost impossible to make shipments of whisky and brandy monthly as provided in paragraph 2 of War Department order dated October 28, 1871.

I therefore respectfully request that said paragraph be so modified that the introduction of these liquors may be allowed in like manner to that of ale and wine, the quantity and disposition being as at present subject to the absolute control and direction of the post-commander.

Very respectfully, your obedient servant,

JOHN S. EVANS,
Post-Trader.

Exhibit A is a description by diagram or map of the Indian Territory.

EXHIBIT B.

WAR DEPARTMENT,
Washington City, October 28, 1871.

Orders.

I. On the order of any officers of the garrison, approved by the commanding officer, the post-trader at Fort Sill has authority to take to that post from points outside the Indian Territory a limited quantity of wines, porter, and ale, provided such supplies are for the use of the officer so ordering.

II. The post-trader at said post has authority to take to said post not to exceed ten gallons of brandy and ten gallons of whisky monthly, to be used only for medicinal purposes and sold only on the authority of the post-commander.

WILLIAM W. BELKNAP,
Secretary of War.

EXHIBIT C.

WAR DEPARTMENT,
Washington City, February 2, 1872.

Orders.

The following is hereby substituted for paragraph I of orders dated October 28, 1871, paragraph II to remain as at present:

I. Permission is hereby granted the post-trader at Fort Sill to carry thereto and keep on hand for sale to officers such quantity of wines, ale, porter, or other malt liquors as the commanding officer at the post may deem advisable, to be sold only on his approval.

WM. W. BELKNAP.

EXHIBIT D.

WAR DEPARTMENT,
Washington City, January 3, 1873.

Orders.

Paragraph II of orders dated October 28, 1871, authorizing the post-trader at Fort Sill, Indian Territory, to take to that post a limited quantity of brandy and whisky monthly, "to be used only for medicinal purposes and sold only on the authority of the post commander," is hereby so modified as to permit the introduction of liquors in the same manner and under like restrictions as in the cases of ale, wine, and porter, (*vide* orders dated February 2, 1872,) the quantity and disposition thereof to remain subject to the control and direction of the post-commander.

WM. W. BELKNAP,
Secretary of War.

EXHIBIT E.

HEADQUARTERS, FORT SILL, INDIAN TERRITORY,
February 17, 1873.

Mr. J. S. EVANS,
Post-trader:

Under the provisions of War Dept. orders of January 3rd, 1873, modifying War Dept. orders of October 28, 1871, you are hereby authorized to bring to this post

the following quantities and kinds of liquors, and to dispose of the same under such rules and restrictions as the post-commander may hereafter impose, viz:

100 casks ale and porter.
100 cases imperial wine.
50 bbls. whisky.
5 " brandy.

By order of Major Geo. W. Schofield.

C. E. NORDSTROM,
1st Lt. 10th Cavalry, Post Adjutant.

EXHIBIT F.

Copy of indorsement on application of J. S. Evans & Co., post-traders, for modification of par. 2, War Department orders, dated October 28, 1871, regulating shipment of whisky and brandy.

(First indorsement.)

HEADQUARTERS, FORT SILL, INDIAN TERRITORY,
December 2, 1872.

In the opinion of the post-commander, it would be better for both trader and purchaser were the trader permitted to introduce liquors in quantities larger than is now permitted at one shipment.

With a view to accomplish this, the within request is recommended to the favorable consideration of the honorable Secretary of War.

GEORGE W. SCHOFIELD,
Major 10th Cavalry, Commanding.

Q. (By Mr. CARPENTER.) Do these papers which have been read cover all the indulgences granted to you in regard to the selling of liquor?

A. They do.

Q. Every one of them made subject to the control and discretion of the post-commander?

A. In every case.

Q. This and the enlargement of the reservation were the only favors you ever asked or received?

A. All that I have any recollection of.

Mr. CARPENTER. Mr. President, we ask leave to call General Townsend at this point for the purpose of identifying some records.

E. D. TOWNSEND recalled and examined.

By Mr. CARPENTER:

Question. [Submitting a paper.] Is that the order enlarging the reservation at Fort Sill?

Answer. This is the order of the President declaring the reservation at Fort Sill on the 29th of January, 1872. It makes the reservation contain thirty-six square miles.

Mr. CARPENTER. We ask the Secretary to read it.

The Chief Clerk read as follows:

HEADQUARTERS, DEPARTMENT OF THE MISSOURI,
Fort Leavenworth, Kansas, January 29, 1872.

General Orders No. 2]

By authority of the President of the United States, and in accordance with the instructions of the Secretary of War, dated January 19, 1872, the military reservation at Fort Sill, Indian Territory, is designated as follows:

The initial point of the survey is the flag-staff. From this point due north two (2) miles and four hundred and forty (440) yards, to a point on the northern boundary line of the reservation; from this point due east three (3) miles to the northeast corner; thence due south four (4) miles to the southeast corner; thence due west nine (9) miles to the southwest corner; thence due north four (4) miles to the northwest corner; thence due east six (6) miles to the above-mentioned point on the northern boundary line, to close the boundary.

The points of the compass mentioned are magnetic. The variation of the magnetic needle in June, 1871, was 11° 22′ 30″ east.

Monuments of hewn stone with cut letters "U. S. M. R." on the one side, and "I. T." on the other, mark the corners of the reservation; all half miles are marked by plain posts.

The reservation contains thirty-six (36) square miles.

By command of Brigadier-General Pope:

R. WILLIAMS,
Assistant Adjutant-General.

Official:
E. D. TOWNSEND,
Adjutant-General.

Q. (By Mr. CARPENTER.) What paper is that? [Submitting a paper.]

A. This is a copy of a letter dated "Headquarters, Department of the Missouri, Fort Leavenworth, Kansas, August 12, 1871," addressed "to the Adjutant-General of the Army," by General Pope, commanding the Department of the Missouri.

Q. Please read the paper entire and all the indorsements on the back?

A. The letter is:

HEADQUARTERS DEPARTMENT OF THE MISSOURI,
Fort Leavenworth, Kansas, August 12, 1871.

To the ADJUTANT-GENERAL OF THE ARMY,
Washington, D. C.:

(Through Headquarters Military Division of the Missouri.)

SIR: In compliance with the instructions of the General of the Army of June 6, 1868, I have the honor to transmit herewith accompanying, a map and field-notes of the United States military reservation at Fort Sill, Indian Territory, with a view to their being properly declared by the War Department.

I am, sir, respectfully, your obedient servant,

JNO. POPE,
Brevet Major-General Commanding.

[Indorsement.]

HEADQUARTERS DEPARTMENT OF THE MISSOURI,
OFFICE OF THE CHIEF ENGINEER,
Fort Leavenworth, Kansas, ——, 187-.

Description of the United States military reservation at Fort Sill, Indian Territory.

Q. State the substance of these indorsements without taking time to read them in full.

A. These notes which I commenced to read are the same as those read in the general orders.

Q. State by what officers that is indorsed and recommended, the channels through which it came.

A. It is indorsed first by the assistant adjutant-general, at headquarters Military Division of the Missouri, Chicago, August 22, 1871.

Q. Who is that?

A. James B. Fry.

Q. Sheridan's adjutant-general?

A. Yes, sir. Next it is indorsed:

ADJUTANT-GENERAL'S OFFICE,
Washington, August 29, 1871.

Respectfully submitted to the Secretary of War, recommended, and with remark that it would seem proper to obtain the consent of the Indian Bureau before declaring this reservation, as it appears to be within the Indian reserve as set apart by treaty of October 21, 1867, with the Kiowas and Comanches. (Statutes at Large, volume 15, page 582.)

E. D. TOWNSEND,
Adjutant-General.

Q. That is by yourself.

A. Yes, sir.

Q. Now I ask you if you have the paper there giving the consent from the Interior Department?

A. I have.

Q. Read it in that connection.

A. The first is the letter of the Secretary of War to the honorable Secretary of the Interior.

WAR DEPARTMENT,
Washington City, September 2, 1871.

SIR: Inviting your attention to the accompanying letter in relation to and plan and description of the military reservation at Fort Sill, Indian Territory, which appears to be within an Indian reserve, I have the honor to inquire if the Indian Department has control over this property, and, if so, whether there is any legal obstacle known to the Department of the Interior to its being set apart as a military reservation.

The return of the papers is requested.

Very respectfully, &c.,

W. W. B.,
Secretary of War.

Hon. SECRETARY OF THE INTERIOR.

This is a copy of the original letter. The next is:

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, D. C., September 7, 1871.

SIR: I have the honor to acknowledge the receipt, by reference from the Department, for my views of a communication from the honorable Secretary of War, dated the 2d instant, inclosing map, with accompanying papers, of the site of the proposed military reservation of Fort Sill, Indian Territory, and inquiring if there is any legal obstacle known to the same being set apart for the purpose stated.

In reply, I will state that Fort Sill is located in the country set apart for the Kiowas and Comanches by the second article of the treaty concluded with said Indians October 21, 1867. (Statutes at Large, volumes 14, 15, page 582.)

By the seventh clause of the eleventh article of said treaty the Kiowas and Comanches "agree to withdraw all opposition to the military posts now established in the western Territories." This is the only provision in said treaty regarding military posts, and I am of opinion that there can be no objection to the setting apart of the military reservation in question.

It is proper to state that in accordance with the terms of the treaty concluded with the Kiowas, Comanches, and Apaches, October 21, 1867, (Statutes at Large, volumes 14 and 15, page 589,) the latter became confederated with the former, and accepted a permanent home on the Kiowa and Comanche reserve.

The papers referred by you are returned herewith.

Very respectfully, your obedient servant,

H. R. CLUM,
Acting Commissioner.

To the honorable SECRETARY OF THE INTERIOR.

The next is a letter to the honorable Secretary of War, inclosing that:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., September 8, 1871.

SIR: Respectfully referring to your communication of the 2d instant, inclosing map with accompanying papers, and making inquiry as to the propriety of the site proposed at Fort Sill being set apart as a military reservation, I have the honor to transmit herewith for your information copy of a report from the Acting Commissioner of Indian Affairs, dated the 7th instant, in relation to the subject, in whose views I concur.

Very respectfully, your obedient servant,

B. R. COWEN,
Acting Secretary.

To the honorable the SECRETARY OF WAR.

There was a subsequent communication from the Secretary of War, dated—

WAR DEPARTMENT, *October 11, 1871.*

Hon. SECRETARY OF THE INTERIOR:

SIR: The President having been pleased to set aside for military uses and as a military post the reservation at Fort Sill, Indian Territory, I have the honor to forward to you for compliance therewith his directions that the same be noted in the General Land Office, and also the plats and notes of survey of the reservation, which, when no longer needed, please return to this Department, together with the President's order.

Very respectfully, your obedient servant,

W. W. BELKNAP,
Secretary of War.

That letter is acknowledged by the Secretary of the Interior:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., 13th October, 1871.

SIR: I have the honor to acknowledge the receipt of your letter of the 11th instant, transmitting the President's order of 7th instant, setting aside for military uses the lands at Fort Sill, Indian Territory.

A copy of your letter, and all the papers accompanying it, have to-day been sent to the Commissioner of the General Land Office, for appropriate action.

Very respectfully, your obedient servant,

C. DELANO, *Secretary.*

Hon. WILLIAM W. BELKNAP,
Secretary of War.

Q. Now return to the paper you were reading and finish the indorsements on that. You had read your own letter and stopped there.

A. The remaining indorsements are simply office marks showing that the paper I hold in my hand is a copy of the original papers sent to the Interior Department from the War Department.

ADJUTANT-GENERAL'S OFFICE,
Washington, January 20, 1872.

Official copy for file in the Adjutant-General's Office.

E. D. TOWNSEND,
Adjutant-General.

Then come sundry memoranda of the dates and so on.

Q. Was not that approved by the Secretary of War and then by the President?

A. Yes, sir.

Q. All those?

A. I beg pardon.

Q. You stopped with reading your own letter in which you advise that the Department of the Interior should be consulted.

A. The third indorsement is:

WAR DEPARTMENT,
Washington City, September 15, 1871.

Approved and respectfully submitted for the action of the President.

WM. W. BELKNAP,
Secretary of War.

The fourth indorsement:

EXECUTIVE MANSION, *October 7, 1871.*

The reservation at Fort Sill, Indian Territory, as described in the accompanying plat and notes of survey, approved by the Secretary of War, is made for military purposes, and the Secretary of the Interior will cause the same to be noted in the General Land Office to be reserved as a military post.

U. S. GRANT.

Q. That completes that document, does it?

A. Yes, sir.

Mr. CARPENTER. That is all for the present, General.

JOHN S. EVANS recalled.

Cross-examination by Mr. CARPENTER continued:

Question. I understood you to say that the enlargement of the reservation, which has just been explained here, and the licenses about the sales of liquors were the only favors you ever asked and the only ones you ever received as post-trader from the Secretary of War?

Answer. I have so stated.

Q. When you returned from Washington to your fort who was commander of the post at that time?

A. General Grierson.

Q. Did you communicate to him the contract which you had made with Marsh?

A. I did.

Q. How soon after your arrival there?

A. Probably the same day.

Q. About what time was that?

A. I think it was the evening of the same day.

Q. About what time did you get home?

A. Some time early in November.

Q. You communicated it to Grierson in November, 1870?

A. I did.

Q. And all the facts that you knew about it?

A. All the facts that I knew about it.

Q. You said that when you came to Washington you were introduced to the Secretary of War. Did you mean that?

A. When I came to Washington I was introduced indirectly through Mr. Rice.

Q. Did Mr. Rice go with you to the Secretary of War?

A. He did not.

Q. Did he give you a letter?

A. No; he saw the Secretary prior to it.

Q. That is what you understood from him?

A. Yes, sir.

Q. But when you went to the War Department you were recognized by General Belknap as the man he had seen at Keokuk, were you?

A. I was.

Q. And you do not know of your own knowledge that anything passed between Rice and Belknap about it?

A. I never heard a word. I never saw them together in my life.

Q. Since your appointment you have been, you say, the only trader at Fort Sill?

A. The only military trader at Fort Sill.

Q. Is that post exceptional in that respect or not?

A. It is not an exception.

Q. There is but one at any of the posts?

A. That is my information.

Q. Have you related all that took place between you and the Secretary of War in regard to any arrangement to be made between you and Marsh?

A. I have.

Q. Do you know whether the Secretary of War knew that there was any arrangement made between you and Marsh, or what were the terms of the arrangement?

Mr. Manager McMAHON. Speak only of your own knowledge; give no impressions or belief, but simply what facts you know.

Mr. CARPENTER. That is what I asked him. (To the witness.) Did you communicate the fact of having made a contract with Marsh to the Secretary of War?

A. I never spoke to the Secretary of War on the subject.

Mr. Manager LAPHAM. He says he did not see him; he went away without seeing him.

Mr. CARPENTER. He might have communicated it without seeing him, in a letter, or in the dark. (To the witness.) You say you did not communicate that fact to the Secretary of War?

A. In no way, shape, or form.

Q. (By Mr. CARPENTER.) After you returned to Fort Sill and after that contract made between you and Mr. Marsh, by which you bound yourself to pay him sums of money on dates fixed in the contract, did you put up the prices of your goods at the fort?

Mr. Manager McMAHON. One moment. Mr. President, that is a question that has already been settled, as I understand, by the Senate two or three times, and we do not care to go into that matter as to whether he put up the prices of his goods.

Mr. CARPENTER. I do not understand that it has been settled at all. We offered certain questions here, we put to witnesses certain questions, and I stated that I proposed to follow the questions with this proof; and, notwithstanding that statement, it is true the Senate excluded the questions; but that does not exclude the offer. It might be that the Senate thought the question was an improper one, although the offer would be perfectly proper. This is, if I recollect, the first time we have distinctly offered to prove the fact, and I now offer to prove by this witness that he never put up his prices one cent in consequence of that arrangement with Marsh.

Mr. Manager McMAHON. Mr. President, certainly the memory of the gentleman must be at fault, for I think if any one thing was contested with some warmth and zeal in the trial of this case in chief it was this identical proposition whether it made any difference in the trial of this case whether by reason of this tribute that Evans was paying to Marsh the soldiers or anybody else were charged higher prices than they had been before; and if that question was not settled by this Senate, not only once but twice or three times, then I have failed to see entirely the applicability of a decision to a point made.

Mr. CARPENTER. Allow me to interrupt you a moment.

Mr. Manager McMAHON. Certainly.

Mr. CARPENTER. The question put to the Senate was not would the offer made be proper when it should be reached; the only question submitted was shall this interrogatory be put. It is true that by way of inducing the Senate to allow the question, I stated the proof that I expected to follow it up with; but *non constat* that the question would be proper even if the poof would be proper; and the only question submitted to the Senate, and the only one which the Senate passed upon was whether the particular interrogatory should be answered, not whether this offer of proof would be proper when the time came to offer it.

Mr. Manager McMAHON. Undoubtedly, because I never knew before that a court of law settled questions in a bunch.

Mr. CARPENTER. That is the reason they did not settle this.

Mr. Manager McMAHON. But whenever they settle a particular question upon a particular principle, I never knew before that that principle which was then established by the court in that particular case did not apply in every subsequent stage of the case when the same question arose. I do not understand that a court of law lays down rules for all questions that may be offered; but the principle that is applicable to the particular question, if a subsequent question is the same in substance and involves the identical point, is to be applied. It seems to me it is wasting time to argue it.

But now let me put a question to the gentleman. I want to hear from him—and I will allow the interruption—upon the materiality of this testimony once more.

Mr. CARPENTER. The fourth article, if I remember the number rightly, charges that in consequence of this arrangement between Marsh and Evans the soldiers and officers of the Union Army were defrauded and compelled to pay extravagant and exorbitant prices. Now we offer to show that that is not true. Let the managers strike it out of the articles, and we do not care for the proof. If it remains in the articles, we offer to disprove it and will prove by this witness that he not only did not increase his prices, but that they were absolutely lower from that time out until he was removed than they had ever been before, and not, as he expresses it, the one-tenth part of one cent was added to the price of goods sold to the soldiers in consequence of that arrangement.

Mr. Manager McMAHON. Now I think that the argument the gentleman has made will recall to the Senate at once the fact that this question was thoroughly and completely argued not only upon one occasion but upon two and probably three different occasions, because the honorable gentleman will remember that at one stage of the case I alluded to these very words upon which he put so much stress, and it seems the honorable gentleman is more troubled about the aggravations of this case than about the crime that has been committed or charged.

Mr. CARPENTER. There is not any crime.

Mr. Manager McMAHON. O! I put this illustration, that it was like charging in an indictment that the act was against the peace and dignity of the State in which the particular offense was committed. Raising prices on the soldier is not the crime charged against this individual. That may be an aggravation, but whether it exists or does not exist, the crime is just as absolute and complete, if proven, as it would be if it raised the prices ten times on the soldiers.

Mr. CARPENTER. Then why not concede the fact that it did not raise the prices?

Mr. Manager McMAHON. Simply because the question has been settled. The pertinacity with which the gentleman undertakes to overrule the Senate surprises me, and I think I shall save the time of the Senate by insisting that this testimony is not competent, has nothing to do with the trial of this particular case. It may have something to do with some outside or ulterior purpose which either the gentleman or his client may have in his bosom, but so far as this case is concerned, it is impossible for me to see how it can have any bearing whatever. If he were able to prove the fact, as he says, that after this tribute of $12,000 was put upon him he lowered his prices, it is a very remarkable fact and one that I should like to see proven in some other tribunal for the purpose of ascertaining some new patent method for reducing prices.

I submit this question to you Senators; we have discussed it twice, and it having been twice decided, it seems to me the question ought to be set at rest.

Mr. CONKLING. May we hear the question read?

The PRESIDENT *pro tempore*. The question will be read by the reporter.

The reporter read the question, as follows:

Q. After your return to Fort Sill and after that contract made between you and Marsh by which you bound yourself to pay him sums of money at the dates fixed in the contract, did you put up the prices of your goods at the fort?

The PRESIDENT *pro tempore*. The Chair will put the question to the Senate, Shall this interrogatory be admitted?

Mr. MORRILL called for the yeas and nays.

The yeas and nays were ordered; and being taken, resulted—yeas 26, nays 13; as follows:

YEAS—Messrs. Allison, Booth, Cameron of Wisconsin, Conkling, Cooper, Cragin, Dawes, Ferry, Frelinghuysen, Harvey, Hitchcock, Howe, Ingalls, Logan, Merrimon, Mitchell, Morton, Oglesby, Paddock, Patterson, Randolph, Sargent, Wadleigh, West, Windom, and Wright—26.

NAYS—Messrs. Bogy, Caperton, Cockrell, Dennis, Edmunds, Gordon, Kelly, Kernan, Maxey, Morrill, Norwood, Whyte, and Withers—13.

NOT VOTING—Messrs. Alcorn, Anthony, Barnum, Bayard, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Christiancy, Clayton, Conover, Davis, Dorsey, Eaton, Goldthwaite, Hamilton, Hamlin, Johnston, Jones of Florida, Jones of Nevada, Key, McCreery, McDonald, McMillan, Ransom, Robertson, Saulsbury, Sharon, Sherman, Spencer, Stevenson, Thurman, and Wallace—33.

So the question was decided in the affirmative.

Mr. CARPENTER. Answer the question. Let it be read.

The question was read to the witness by the reporter, as follows:

Q. After your return to Fort Sill and after that contract made between you and Marsh by which you bound yourself to pay him sums of money on the dates fixed in the contract, did you put up the prices of your goods at the fort?

A. I did not.

Q. (By Mr. CARPENTER.) Did you continue from that time on to sell your goods at the fort at as low a price as you were selling when that contract was made or lower.

A. At the time I was removed from that post I think I can safely say I was selling goods 25 to 33 per cent. cheaper than I was at the time I had that appointment made.

Q. When was that?

A. In 1870.

Q. When was your removal?

A. In the early part of March this year.

Q. Then all the time you remained post-trader and the contract between you and Marsh continued in existence, you were selling goods to the soldiers and officers at a lower rate than you were before the contract was made?

A. I was. As my facilities for getting goods into the country were better, I reduced my prices.

Q. The day after you returned to Fort Sill I suppose the facilities for receiving goods were just about the same that they were the day you left Fort Sill?

A. About the same.

Q. And you did not at that time, in consequence of the Marsh contract, increase your prices a cent?

A. I did not. I never increased an article in my establishment one cent.

Q. How much did you ever pay to the Secretary of War for this appointment?

A. I never paid him a cent.

Q. Who were traders prior to July 15, 1870, at that post besides yourself?

A. E. H. Durfee and J. C. Dent.

Q. Where did they reside?

A. One of them resided in Leavenworth, Kansas, and the other, I think, at Fort Union.

Q. Neither of them resided at the post?

A. Neither one was ever at the post to my knowledge.

Q. How long have you been acquainted with this post-trading or sutler business?

A. Since 1863 or 1864.

Q. Do you know any other posts except that of Fort Sill where the trader lived away from the post?

Mr. Manager McMAHON. Speak only from your own knowledge, not from information.

Mr. CARPENTER. That is what I am asking for.

A. I do not know any others.

Q. (By Mr. CARPENTER.) These two traders at Fort Sill you say lived away?

A. They lived away at that time.

Q. Did you receive any information from Mr. Belknap in regard to the new law?

A. I never received any information from Mr. Belknap regarding the law.

Q. Were you in partnership with Mr. Durfee when you were appointed by General Belknap?

A. I was not.

Q. That contemplated partnership was abandoned prior to the time when you were in fact appointed?

A. It was.

Q. Do you not recollect that in the conversation with the Secretary of War he spoke disparagingly of appointing Mr. Durfee, in some way?

A. I cannot recollect anything of that kind; I have only an indistinct recollection of some remarks having been made to that effect, either by the Secretary or by Mr. Marsh.

Q. Did you have an interview with the Secretary of War about November 1, 1871, in regard to this liquor business, in the War Department?

A. Yes, sir; at the War Department Office.

Q. Did Mr. Fisher also call?

A. I do not recollect his doing so. I do not know that he did.

Q. About what time did you call on the Secretary of War? I will state the object of the question.

Mr. Manager McMAHON. We understand it.

Mr. CARPENTER. I was afraid you did not. The witness may not, and I will tell him. (To the witness.) There is a letter written to you by the Secretary of War on the 2d of November, 1871. Where were you on that day?

A. I was in the States.

Q. (By Mr. CARPENTER.) Not at home?

A. No, sir.

Q. Did you call on General Belknap soon after that and before you had gone home and received that letter?

A. That letter, I think, was forwarded me here from Fort Sill.

Q. Did you see the Secretary before or after you received that letter?

A. After I received that letter.

Q. And did not see him before?

A. I did not.

Q. Reflect a little on that subject, and be as particular as you can about it. Try to recall when you came here, what date.

A. I cannot remember. I cannot remember the year really.

Q. Then how do you know that you did not see the Secretary of War soon after the 2d of November?

A. I did not say I did not. I did not mention any date. I say I called upon him in reference to that matter, but I cannot tell the year.

Q. Have you any means by your books or anything else of telling?

A. My partner probably would recollect.

Q. Is he here?

A. He is.

Q. What is his name?

A. Fisher. I would presume it was in 1872, shortly after the license was granted. The documents will show.

Mr. Manager McMAHON. I think they were in 1871.

Q. (By Mr. CARPENTER.) Can you say whether or not you saw the Secretary of War between the 1st and 8th of November, 1871?

A. I cannot.

Q. You cannot say whether you did or not?

A. I cannot say whether I did or did not see him.

Re-examined by Mr. Manager McMAHON:

Q. I understand you to say that you do remember that the letter was sent to you at Fort Sill and returned to you in the States?

A. That is my recollection.

Q. And after receiving that letter you went to see the Secretary of War?

A. I did.

Q. How long did it take a letter to go to Fort Sill in those days?

A. I should suppose from ten days to two weeks at that time.

Q. You stated a while ago that you did not increase prices on account of this contract.

A. I did; but after that reduced them.

Q. What improved facilities did you have for the shipment of your goods? You have alluded to something; what were they?

A. The extension of the railroads into the Indian Territory was a very considerable agency which reduced the expense of getting goods there, besides reducing the risks of shipping.

Q. And your rates of transportation were reduced?

A. Reduced to probably one-fourth of what they had been before.

Q. The cost of transportation is one large item, is it not, in the price of goods?

A. A very considerable item at that time and is even to this day.

Q. And it was by reason of the diminished cost of transportation that you were not compelled to put up the prices of your goods?

A. It was the increased trade he gave me by being the sole trader at the post.

Q. By having the exclusive privilege. Now, with your diminished cost of transportation, would you not have been able to put the prices of your goods down if it had not been for this $12,000 a year you had to pay to Mr. Marsh?

A. Certainly I could have sold my goods, whatever that percentage was, that much less on my sales.

Q. So you really had to make that $12,000 out of your sales in order to make the profit that you had been previously making?

A. I did not change my prices except as the cost of transportation, the cost of getting goods in, reduced the cost.

Q. You could have reduced your prices to the soldiers and emigrants just as much less as the $12,000, if it had not been for the $12,000?

Mr. CARPENTER. Would you?

Mr. Manager McMAHON. Never mind about that. "Would you?" is too long back, Brother Carpenter. (To the witness.) When you went to see the Secretary of War the day after General Rice had been to see him, according to your statement, state whether any conversation passed between you and the Secretary as to the fact of General Rice having been to see him.

Mr. CARPENTER. That I object to. You have examined on that point.

Mr. Manager McMAHON. This is simply re-examining on what you cross-examined about. State your ground of objection.

Mr. CARPENTER. The objection is that you have been over the ground twice.

Mr. Manager McMAHON. I have not been over this ground, but the gentleman has been over it.

Mr. CARPENTER. Go ahead.

Q. (By Mr. Manager McMAHON.) State now whether in that conversation between you and the Secretary of War he in any way alluded to the fact that General Rice had been to see him for you the day before.

A. I have no recollection that he did; I do not remember about it.

Q. Did you employ Mr. Rice as your attorney to go and lay your case before the Secretary of War?

Mr. CARPENTER. That we object to. He has already said that he does not know that Rice ever saw Belknap or that Belknap ever saw Rice; he never saw them together; he knows nothing about it except what either Rice or Belknap told him, and he says Belknap never told him anything. If they want to know anything about Mr. Rice call Mr. Rice.

Mr. Manager McMAHON. He said he does not know.

The PRESIDENT *pro tempore*. The Chair sustains the objection.

Recross-examined by Mr. CARPENTER:

Q. Mr. Evans, after you went back to Fort Sill with your appointment would you have reduced your prices but for the contract made with Marsh?

Mr. Manager McMAHON. We object to that. The question is, Would you have done so but for something?

Mr. CARPENTER. Yes; but for this contract with Marsh.

Mr. Manager McMAHON. We object.

Mr. CARPENTER. Why, Mr. President, they asked this man if he could have sold for less if he had not paid money to Marsh. It hardly required a witness to prove that. He could have given away his goods. The question is whether he would have done so; in other words, the question is whether his trade with the officers and soldiers was at all influenced by the contract he had with Marsh. They asked him, "Could you have sold for less if you had paid less and made the same?" That is mathematics. Now, the question is whether he would have done so. Mathematics will not settle that; this witness can. After they have proved the mathematics of the question I offer to prove the fact.

Mr. Manager McMAHON. The question can be submitted to the Senate.

The PRESIDENT *pro tempore*. Shall this interrogatory be admitted?

The question was decided in the negative.

Mr. CARPENTER. That is all. Now, Mr. President, following the example of the managers, I offer here in partial corroboration of this witness his examination before the committee of the House, in which he swore distinctly that he would not have made the change of a shilling and that he never would have put prices down until he was compelled by the commission of officers that had jurisdiction.

Mr. Manager McMAHON. This matter is considered to be ruled out under the decision already made, I take it. If the Senate will not let him swear to it here in open court, they certainly will not allow you to corroborate him in that way.

Mr. CARPENTER. That is not the point at all. They have called the witness. This case is a great deal stronger than it was four days ago. They called a witness, Mr. Marsh, examined him, and then offered the evidence he had given before the committee in corroboration of his statement here. That struck me as being peculiar; but the Senate admitted it. The prosecution has now called another witness and examined him, and I propose to introduce his testimony before the same committee. I could introduce it for the purpose of contradicting him—that would be proper enough—but I want to follow the shade of the managers. I do not consent in any case which I try that the opposite counsel shall be more irregular than I am, and following precisely in their wake I offer this testimony to corroborate the testimony of the witness on the stand.

Mr. Manager McMAHON. Mr. President, as to the opposite counsel in any case being more irregular than the gentleman, he can always rest easy and assured in his position upon that question. I know nobody who can ever compete with him in that particular regard. But now to the point: I do not know whether to say that I am surprised at the position of the honorable gentleman in undertaking to claim that there is a parallel between the conduct of the managers in offering Mr. Marsh's testimony and his present offer in regard to this particular matter. I scarcely am able to think that the honorable gentleman is really in earnest about the proposition, for I have too high a regard for his intelligence as a lawyer and his respect for the intelligent men before whom he is trying this case. We offered Mr. Marsh's testimony simply for the purpose of drawing a conclusion from the action of the Secretary of War when it was read to him. That was all; not to corroborate Marsh, not to contradict Marsh, and it was expressly ruled in by the Senate upon that ground.

Mr. CARPENTER. The manager forgets his own statement.

Mr. Manager JENKS. Here it is, on page 190 of the RECORD.

Mr. Manager McMAHON. I need not waste any time on a question like that before a Senate composed, a majority of them, of lawyers; but the point now on which I desire the honorable gentleman's attention because he amazes me. He is not permitted to prove by this witness that he would not have decreased his prices but for this contract. The Senate by a unanimous vote says he shall not put that question. Then, for the purpose of corroborating the witness as he says, he offers to put in evidence a statement to the same effect that he wanted to prove now and which the Senate would not allow him to prove. Never before in all the extended practice that I may have had in a western town did I hear of corroborating your own witness. If you claim anything from him, I have heard of impeaching him by showing that he made a different statement; but I never heard of corroborating him by showing that he made the same statement on a different occasion; because, if he has made the same statement, what is the use of corroborating him by his oath on another occasion? He is in the court. We have not impeached him. There is no question of impeaching or of corroboration. I must say, with all due deference to the gentleman, that I think he has lost his bearings in the books of evidence on this question.

Mr. CARPENTER. I should not wonder if I had, for I have been reading the arguments of the managers too much. When the question was put to the manager why he claimed to put in that testimony given in another forum, where there was no cross-examination or anything of the kind, and whether it was to corroborate the witness or not, the manager answered in this way:

> Mr. Manager McMAHON. Mr. President, the question put to the managers is as follows: "Is it the object of the present inquiry to corroborate or discredit the testimony of Marsh." In the first place, I will answer in detail that it is to corroborate Mr. Marsh in just this far, not as evidence of any facts stated therein, but when the charge was made by Marsh the Secretary of War by his conduct admitted the truthfulness of it.

So far it was designed to corroborate Mr. Marsh. The precise extent of corroboration that we shall get out of this evidence I do not pretend to state, because it is for the court to weigh the evidence and only for me to offer it. But the manager says he offered that other statement in corroboration so far; that is, so far as it could corroborate. I ask nothing more for this. I offer it in good faith as within the ruling of this court in partial corroboration of the testimony of the witness.

Mr. Manager McMAHON. The Senate may decide. We have no answer to make.

The PRESIDENT *pro tempore*. The question is, Shall this evidence be admitted?

The question was decided in the negative.

Mr. WRIGHT. I wish to put a question to the witness Evans:

When you left the Secretary of War, after you met him at his house, and just before you made the contract with Marsh, it was understood that Marsh had been promised or had received the appointment. Then you say you arranged with Marsh that you were to receive the appointment. Now, was it understood between you and Marsh that he was to advise the Secretary of the change? If not, how was the Secretary of War advised of this change, and did you have anything to do with letting him know of such change?

The WITNESS. It was my understanding that no appointment had been made out, but that the appointment had been promised or made verbally but had not been made out formally, and that the appointment would be made to me originally.

Mr. Manager McMAHON. The Secretary had better read the question to him.

Mr. WRIGHT. Let the question be read.

The reporter read the question of Mr. WRIGHT.

The WITNESS. I had no intercourse with the Secretary of War regarding this matter at all, after I met him that night. My recollection, as I stated, was that he told me that he had either promised Mr. Marsh or given him the appointment.

Mr. Manager LAPHAM. The question was, how the Secretary was informed that you were to be appointed instead of Marsh.

The WITNESS. I say that I know nothing about it at all.

By Mr. CARPENTER:

Q. When you left the Secretary of War you were talking about either selling your property there to Marsh or making a partnership with him, were you not?

A. Yes, sir.

Q. Did you ever see the letter that Mr. Marsh wrote to Mr. Belknap asking him to give the appointment to you, as it would be more convenient to have it managed in your name?

A. I never saw it.

Mr. WINDOM. Mr. President, I ask that the trial be suspended at some time most convenient to the court that I may make a report from the committee of conference on the sundry civil bill.

The PRESIDENT *pro tempore*. If there be no objection proceedings will be suspended for that purpose.

After some time spent in legislative session, the Senate resumed the trial of the impeachment of William W. Belknap.

The PRESIDENT *pro tempore*. The Senate will resume its session for the trial of the impeachment of William W. Belknap.

JOHN S. EVANS recalled and examined.

By Mr. CARPENTER:

Question. I understood from you in the Hall a few minutes ago that there was one particular thing in which you thought your testimony was misapprehended. You can make any explanation about it you please without objection, I presume?

Answer. My impression on thinking the matter over as to the communication about the liquor business is that I received a telegraphic dispatch from my forwarding agent at the end of the railroad. Instead of waiting for the letter which was subsequently forwarded, I received a telegram from the agent.

Q. Upon that did you see the Secretary of War?

A. Yes, sir.

By Mr. Manager McMAHON:

Q. How was your recollection refreshed on this question?

A. On thinking the matter over myself.

H. T. CROSBY recalled and examined.

By Mr. CARPENTER:

Question. Do you recollect a call made by the House of Representatives on any of its committees for a list of post-traders, &c.?

Answer. Yes, sir.

Q. About what time was it?

A. It was some time in February, the latter part of February, I think.

Q. February of this year?

A. Yes, sir.

Q. Was such a report made by the War Department?

A. It was.

Q. Have you with you or can you produce the list that was sent in obedience to that call?

A. No, sir; I cannot.

Q. Can you produce the letters that were sent with the list?

Mr. Manager McMAHON. Letters to whom?

Mr. CARPENTER. To the committee or to the Speaker, as the case may be.

The WITNESS. [Producing a paper.] This is the call of the House.

Mr. CARPENTER. Hand it to the Secretary, and let it be read.

The Chief Clerk read as follows:

Forty-fourth Congress, first session.

CONGRESS OF THE UNITED STATES,
IN THE HOUSE OF REPRESENTATIVES, *February* 16, 1876.

On motion of Mr. CLYMER,

Resolved, That the Secretary of War be requested to inform this House of the names, residence, and date of appointment of the several post-traders of the several trading establishments and the place at which each one is trading; and also what changes, if any, in the price of goods, wares, and merchandise, or supplies of any sort and description whatever, as fixed by the post or other council of administration, has been made, and by what authority.

Attest:

GEORGE M. ADAMS, *Clerk*.

Q. (By Mr. CARPENTER.) Produce any letters you have, office letters or copies, to the committee or the House in obedience to that call.

A. [Producing paper.] Here is a press copy of the reply of the Secretary of War, signed by General Belknap, dated February 23.

Mr. CARPENTER. Pass it to the Clerk and let it be read.

The Chief Clerk read as follows:

The Secretary of War has the honor to transmit to the House of Representatives, in compliance with the resolution of the House dated the 16th instant, the names of the several post-traders, residence, date of appointment, and place at which each one is trading.

In reply to that portion of the resolution calling for information as to "what changes, if any, in the price of goods, wares, and merchandise, or supplies of any sort and description whatever, as fixed by the post or other council of administration, has been made, and by what authority," the Secretary of War has the honor to report that councils of administration were authorized to establish the rates and prices at which post-traders' goods should be sold, by paragraph 1 of circular from this Department dated March 25, 1872, as follows:

[Circular.]

WAR DEPARTMENT,
Washington City, March 25, 1872.

I. The council of administration at a post where there is a post-trader will from time to time examine the post-trader's goods and invoices or bills of sale; and will, subject to the approval of the post-commander, establish the rates and prices (which should be fair and reasonable) at which the goods shall be sold. A copy of the list thus established will be kept posted in the trader's store. Should the post-trader feel himself aggrieved by the action of the council of administration, he may appeal therefrom through the post-commander to the War Department.

II. In determining the rate of profit to be allowed, the council will consider not only the prime cost, freight, and other charges, but also the fact that while the trader pays no tax or contribution of any kind to the post-fund for his exclusive privileges, he has no lien on the soldier's pay, and is without the security in this respect once enjoyed by the sutlers of the Army.

III. Post-traders will actually carry on the business themselves, and will habitually reside at the station to which they are appointed. They will not farm out, sublet, transfer, or sell or assign the business to others.

IV. In case there shall be at this time any post-trader who is a non-resident of the post to which he has been appointed, he will be allowed ninety days from the receipt hereof at his station to comply with this circular or vacate his appointment.

V. Post-commanders are hereby directed to report to the War Department any failure on the part of traders to fulfill the requirements of this circular.

VI. The provisions of the circular from the Adjutant-General's Office of June 7, 1871, will continue in force except as herein modified.

By order of the Secretary of War:

E. D. TOWNSEND,
Adjutant-General.

This paragraph was republished in paragraph 6 of circular from this Department, dated June 7, 1875.

A council of administration was appointed October 30, 1874, to audit the accounts of the post-treasurer at Fort Randall, Dakota Territory, and to transact such other business as may be properly brought before it. In their report dated November 1, 1874, the council submitted a list of the prices at which the goods of the post-trader should be sold. On the 23d of December, 1874, the post-commander re-assembled the council of administration "for the purpose of receiving any communication the post-trader may desire to present in relation to the tariff on his goods agreed upon by said council."

Mr. CARPENTER. The rest of the letter need not to be read. It is immaterial to this case. We only present it to show that a response was made.

The WITNESS. Here is another letter from Mr. CLYMER, dated February 14, 1876.

Mr. CARPENTER. Let that be read.

The Chief Clerk read as follows:

HOUSE OF REPRESENTATIVES,
Washington, February 18, 1876.

To the SECRETARY OF WAR:

DEAR SIR: I am directed by the Committee on Expenditures in the War Department to make inquiry of you whether during your term of office any letters, statements, or any communications have been received by the Department or yourself as its head, from any person or persons, or any officer or officers of the Army, urging, suggesting, or advising the abolishment of sutlerships in the Army, or advising or protesting against the subletting of post-tradership in the same, and if so, to furnish the committee with copies of all the correspondence relating to the foregoing topics. I am also directed to request you to furnish the committee with a list of the names and residence of all persons who at any time have received from you license as post-traders and the name of the several posts for which they may have received license to trade, with the date thereof. By complying with the several requests of the committee you will greatly oblige, yours, very truly,

HIESTER CLYMER.

Mr. CARPENTER. Now give us the reply to it.

The WITNESS. I have a press copy which I will submit.

The Chief Clerk read as follows:

FEBRUARY 23, 1876.

SIR: Referring to my letter of the 19th instant in reply to yours of the 18th instant, on the subject of post-traders, &c., I now have the honor to inclose copy of report of the Adjutant-General, dated the 26th instant, in reply to your inquiry as to the abolishment of sutlerships and the subletting of post-tradership.

The papers accompanying the report of the Adjutant-General are herewith transmitted, also a list of the names of all persons who at any time have received appointment from me as post-traders, names of the posts to which appointed, and where and through whom the appointments were sent.

The regulations issued by me from time to time (circulars dated June 7, 1871; March 25, 1872; and June 7, 1875,) for the government of this matter are also inclosed.

Very respectfully, your obedient servant,

WM. W. BELKNAP,
Secretary of War.

Hon. HIESTER CLYMER,
Chairman of Committee on Expenditures of War Department,
House of Representatives.

Q. (By Mr. CARPENTER.) Can you state what that list in reply to this showed in regard to Fort Sill?

A. It showed what this book of records shows. [Producing a book.]

Q. Is that a book of records kept in the Office?

A. A book of records in the Adjutant-General's Office.

Q. Turn to it and read what it shows about Fort Sill?

A. [Examining.] The heading is "Fort Sill, Indian Territory," and then the entries in the several columns are, name, John S. Evans; date of appointment, October 10, 1870; Secretary of War, or by whom appointed, W. W. Belknap; when and where sent, October, 11, 1870, care of C. P. Marsh, esq., 51 West Thirty-fifth street, New York City; acknowledged November 10, 1870, letter to commanding officer, October 11, 1870.

Q. Those are the entries upon the book of records, from which the statement made to the House was made out?

A. The report of the Adjutant-General was made up from that.

Q. Is that an official book of the War Department?

A. This is the regular book of records of post-traderships in the War Department.

Q. Kept in what Office?

A. Kept in the Adjutant-General's Office, of appointments of post-traders.

Q. You spoke the other day of a letter which was sent from C. P. Marsh to Mr. Belknap requesting that the appointment at Fort Sill be made out in the name of Evans?

A. Yes, sir.

Q. Do you recollect that letter? If so, what did you do with it and why did you do what you did with it?

A. I received that letter, as I receive many others on the subject of post-traders, and I communicated when the appointment was made out. The information that was desired was this, or the directions on it were these: that Mr. Marsh desired the appointment of trader at Fort Sill to be made in the name of John S. Evans and sent to him at a certain address at New York. When the appointment was made out—I think I made it out myself—I entered that address on the appointment, from which it was copied into that book.

Q. Copied in the book which you have just presented here?

A. Yes, sir; which I have just read from.

Q. What did you do with the letter?

A. The letter I placed among the ordinary letters which I considered of a private or personal character, and there it staid until the resignation of General Belknap. It was undisturbed there until that time.

Q. Did Mr. Belknap give any direction to you where to put that letter?

A. I think he gave no special direction about it; I have no recollection of any.

Q. How long was it before Belknap knew where you had put it, if you know?

A. I do not know that he knew it was there at all.

Q. Who got up that system of keeping indexes and letters there?

A. I kept that book myself, because I wanted to facilitate my memory in recollecting the matters I was to do for him.

Q. Was there anything about that letter which you discovered, or which you discovered from the manner of direction of Mr. Belknap, that required any secrecy whatever?

Mr. Manager McMAHON. Never mind that. We have had enough of your opinions about that, Mr. Crosby.

Mr. CARPENTER. Is the question objected to?

Mr. Manager McMAHON. Yes, sir; the letter speaks for itself.

Mr. CARPENTER. I was not asking about what the letter said.

Mr. Manager McMAHON. We do not want his opinion on the matter.

Q. (By Mr. CARPENTER.) Did you think there was anything about that letter which required it to be smuggled?

Mr. Manager McMAHON. I object to the question. I do not care what he thought about it. We want to know what he did about it, and then we can judge what he thought about it. The fact is he did smuggle it, and that is enough.

Mr. CARPENTER. The fact is he did not smuggle it.

The PRESIDENT *pro tempore*. The manager objects to the question.

Q. (By Mr. CARPENTER.) Was there anything in the disposition of that letter peculiar on your part?

Mr. Manager McMAHON. I object to that question.

Mr. CARPENTER. I insist on it. If he smuggled it as you say he did, let us prove it.

Mr. Manager McMAHON. Mr. President and Senators, I think we have had enough so far as this witness is concerned of an attempt to exculpate the defendant by his opinions. How far his testimony in regard to acts may tend to exculpate the defendant is a question which we shall probably consider in the proper progress of this case; but what this witness may think is not admissible. Whether there was anything peculiar in it is a question of simply this witness's opinion, and I think that there is nothing expert in regard to his testimony, nothing difficult for him to lay open before the Senate different from what Senators are able themselves upon an investigation of the facts to determine for themselves as members of the court and members of the jury that are to try the defendant. The question "Was there anything peculiar that you did with this letter?" is not a proper question. It is, what did you do with the letter; where did you put it; by whose direction did you put it there; with whose knowledge or consent did you put it there? That is all. If there was anything peculiar in that matter, that is a question for this court to determine, and not for the witness to undertake to swear to for the purpose of exculpating the defendant.

Mr. CARPENTER. Mr. President, the manager asserts here that this letter was smuggled by this witness. I now ask him the question, was there anything peculiar in your disposition of that letter?

Mr. Manager McMAHON. Why did I say that it was smuggled? Because upon the day of his resignation——

Mr. CARPENTER. Never mind arguing it.

Mr. Manager McMAHON. You asked me the question and I wanted to answer.

Mr. CARPENTER. No, I did not ask you anything.

Mr. Manager McMAHON. I will ask to state it. On the day of the resignation this letter is by this man Crosby, the witness, taken out and delivered, as he testified on one occasion, separately to the Secretary of War at the time the charges were made in relation to this particular matter. I call that smuggling.

The PRESIDENT *pro tempore*. The reporter will read the question and the Chair will submit it to the Senate.

The question was read by the reporter, as follows:

Q. Was there anything peculiar in your disposition of that letter?

The PRESIDENT *pro tempore*. Shall the interrogatory be admitted?

The question was decided in the negative.

Mr. EDMUNDS. I should like to ask the witness, or request counsel to ask the witness—the reporter can take it down—whether there was anything in his treatment of that letter out of the ordinary course of business.

Mr. CARPENTER. That is what I meant by the question I put.

The WITNESS. I treated that letter precisely as I treated every other letter which is found in that package.

Mr. Manager McMAHON. The Senator's question is not being answered. Let it be read to the witness.

The PRESIDENT *pro tempore*. The reporter will read the question.

The question of Mr. EDMUNDS was read by the reporter, as follows:

Q. Was there anything in your treatment of that letter out of the ordinary course of business?

A. I think not, certainly not at the beginning nor during the whole period when it was there in the package, which was about four years. It remained perfectly undisturbed during that time along with the rest of the file of these personal letters. Subsequently I testified here that I went and looked at that letter once about the time of General Belknap's resignation. My recollection is not clear whether I gave that letter to him singly or with the package. I have been disputed so much with by others with whom I have consulted about my recollection that I do not like to be positive about that. One of the gentlemen in the office thinks I gave it with the package, that I put it back in the package——

Mr. Manager LAPHAM. We object to that.

Mr. Manager McMAHON. That other person can be examined when he comes.

The WITNESS. I recollect nothing out of the ordinary course with it.

By Mr. CARPENTER.

Q. You say it remained on file there for four years. Did it remain on file after the information contained in that book of records had been sent to the House of Representatives?

A. It was there at that time.

Q. And the report which was sent to the House of Representatives showed what the letter requested, that the appointment was sent through Marsh, did it not?

A. Yes, sir.

Q. That Marsh had requested it?

A. Yes, sir. All the information was on the public files, in other words.

Q. What is your best present recollection whether you passed that letter over to Belknap distinct from the others, or with them in the package?

A. It is very difficult for me to remember that distinctly.

Q. When did you pass over this package of letters?

A. I think it was a very short time, within a day or two, after his resignation. It may have been the same day; the next day, or the day after. It was very near then. My recollection is not very distinct.

Q. Who had charge of those letters all that time?

A. After I ceased to be General Belknap's clerk in the same room with him, that record ceased also, and the letters that were remaining in the pigeon-holes I put together in a package and placed in the next room in the bottom of a large closet there.

Q. Was there any direction from General Belknap what to do with those letters officially?

A. I do not think he knew where they were.

Cross-examined by Mr. Manager McMAHON:

Q. This book that you have produced to-day is not one of the books that you had here the other day?

A. No, sir.

Q. This is a book which is produced for the first time to-day, is it not?

A. The first time.

Q. This is what you call the official book?

A. That is the official record of the Adjutant-General's Office.

Q. That you have brought in?

A. Yes, sir.

Q. The book that you had the other day that we looked at was a book that you had kept, not as an official book but as a sort of private book?

A. No, sir; it was a sort of official book; it was a memorandum reference book. All commissions of officers are entered at large.

These appointments were not in the Adjutant-General's Office, but were entered in that form. Copies of records of all commissions, appointments of that sort are regularly kept. This was a memorandum book in the Secretary's office, so that we should not have to be sending up and down stairs continually.

Q. The letter of October 8, 1870, requesting the appointment to be made out in the name of Evans is not found in the Adjutant-General's book; there is no reference to it there, is there?

A. No, sir.

Q. None whatever?

A. I believe not; I do not know.

Q. Was there any reference to it in the book you had here the other day which you kept in the War Department?

A. No.

Q. Where was there any reference to this letter to be found?

A. In the personal books which I kept of the Secretary of War.

Q. You have said that this letter was on the file. When you say "file," do you not mean that it was among the letters that were kept in the Secretary of War's office, among what you called his private, semi-official papers?

A. That letter was always where I have stated it to have been; always in the Secretary's office.

Q. But was it not among papers that were open only to you as his chief clerk or his private secretary?

A. I cannot say that; they were in open pigeon-holes.

Q. But did anybody have the right to go in there and call for that correspondence and investigate it?

A. I do not think they had.

Mr. CARPENTER. That is matter of opinion, what you are opposed to.

Mr. Manager McMAHON. No; this is routine of the office.

Mr. CARPENTER. His opinion about routine.

Q. (By Mr. Manager McMAHON.) When you say this letter was on the public files, do you not mean——

The WITNESS. I did not say that it was on the public files.

Mr. Manager McMAHON. You may not have meant to say it; but you did say it.

The WITNESS. I beg your pardon, I did not say it.

Q. There is no reference to this letter on any book now except on this private, semi-official letter-book of yours?

A. That is all.

Q. How are you able, after the lapse of six years, to call to mind anything about what you did with this particular letter? What fixes it in your mind?

A. There are two or three things that fix that in my mind.

Q. Let us have them all.

A. One is the index-book, which I kept myself. The next is the fact of finding it among the files.

Q. Go on.

A. And the production of it. That is all.

Q. Now what does that bring to your mind?

A. In what respect?

Q. Have you any recollection whatever of the receipt of this letter independently of seeing these memoranda on the book, any independent recollection.

A. Certainly I cannot undertake to remember the receipt of that letter.

Q. Have you any recollection of ever having seen it except that you saw some marks on the back of it in your handwriting?

A. I had forgotten it entirely, if it were not that I found it on the files again.

Q. Now that you have found it upon the files, what do you remember about its receipt? What distinct recollection have you now about anything that occurred at the time you received it?

A. I have not any very distinct recollection.

Q. Do you know whether you handed it to General Belknap or not?

A. I do not know whether I handed it to him.

Q. Would you, as his chief clerk, have taken the responsibility of making out the appointment to Mr. Evans without consulting him upon that letter?

A. Certainly not. I took his directions about all appointments.

Q. Then you must have shown that letter to him.

Mr. CARPENTER. We concede that he did, and that Belknap saw it; that he put it away where such letters belonged, and that it remained there for four years, and that it was found there when it was wanted.

Q. (By Mr. Manager McMAHON.) You have no recollection as to whether you received this letter or not?

A. Yes, sir.

Q. All you know is that it passed through your hands from the indorsements on the back?

A. I recognize my handwriting on it.

Q. Did you not testify the other day that whether letters went upon official files or semi-official files would depend on the opinion of the man who received the letter, and the instruction that he would give you at the time he delivered it to you?

A. Generally speaking, I should say that.

Q. Have you any recollection of this letter distinct from that?

A. I have not.

Q. Then, if you put this letter on the semi-official files, must it not have been from the direction of General Belknap?

A. No; it might have been from my own judgment.

Q. I do not want what it might have been. You have no recollection about it?

A. I have no distinct recollection whether it was by his order or my own judgment.

Q. It was a matter that purely concerned the public business, did it not, the making out of an appointment for post-trader?

Mr. CARPENTER. That is matter of opinion again.

Mr. Manager McMAHON. This is simply the basis of a proper question.

Mr. CARPENTER. You cannot put an improper question as the basis of another.

Mr. Manager McMAHON. I have the right to cross-examine him in this way. (To the witness.) Was not this an official letter?

A. I never regarded it so.

Q. (By Mr. Manager McMAHON.) Why not?

A. Because it was of a personal character to General Belknap.

Q. Was it not a request to General Belknap to make out an appointment for a post-trader in the name of John S. Evans? Do you call that a personal letter?

A. I say so of it.

Q. Was it personal, then, because of the relations existing between Mr. Marsh, Mr. Evans, and the Secretary of War?

A. I do not know of those relations you speak of.

Q. Then this letter you treated just as you would treat any ordinary letter of that character, you think, unless directed by the Secretary of War to do otherwise?

A. I have no recollection of that at the time, as I told you; but it must have happened that that came in such shape to me by its envelope, &c.—it looks like a note—that I regarded it as a private note.

Q. How are you able to say that the Secretary of War may not have ordered you to put it on the semi-official file?

A. I told you that I could not say that.

Q. You do not say it?

A. I do not say it.

Q. Have you any recollection about it at all?

A. I have not.

Q. Is it not all mere guess-work?

A. I have not been guessing at anything.

Re-examined by Mr. CARPENTER:

Q. Look at the letter and then look at the official book, and say what solid information there is in the letter that is not on that book.

A. I cannot discover any.

Q. Then, so far as you can judge about it, everything that there is important in that letter was put upon the official book?

Mr. Manager LAPHAM. I object to that.

Mr. Manager McMAHON. I want all there is about John S. Evans read.

The WITNESS. The entries are: Fort Sill, Indian Territory; name, John S. Evans; date of appointment, October 10, 1870; Secretary of War, or by whom appointed, W. W. Belknap; when and where sent, October 11, 1870, care C. P. Marsh, esq., 51 West Thirty-fifth street, New York City; acknowledged November 10, 1870; letter sent to commanding-officer, October 11, 1870.

Mr. Manager McMAHON. Read all the rest that is there. We want the whole entry under that heading.

A. I do not understand these entries very well.

Mr. Manager McMAHON. Never mind, give us what they say, and we will try to make them out.

A. Then under the column "remarks" is "see 434, A. C. P. Complaints about exorbitant prices. Revoked March 6, 1876." These are not in order. "Evans can remain until his successor is ready to furnish supplies, and in the mean time to sell at prices to be established by the council of administration." This was subsequent to the opening of this trial.

Mr. Manager McMAHON. Just read the entries.

Mr. CARPENTER. Continue them right through.

The WITNESS. "Letter to commanding officer at Fort Sill, April 5, 1875, stating Secretary of War desires post council to recommend another man.

"Post council recommends Messrs. Rice & Byers, of Saint Louis, 2407 A. P. C., '76, to Secretary of War, May 11, 1876."

By Mr. Manager McMAHON:

Q. Is that all about Evans?

A. Yes, sir.

Q. When you were on the stand the other day I asked you to give us the fact as to whether General Belknap was in Washington City from July 15 to the 1st of September, 1870, and, if so, how long a period of that time.

A. I can only tell this from looking at the books.

Q. Let us have the statement.

A. A memorandum I have taken in pencil here shows that the letters of the Secretary of War were signed by General Belknap as Secretary all through July until the 27th. From that time to the 2d of August his signature does not appear. There is a telegram of July 28 to him at Watervliet arsenal. From the 2d of August until the 12th of August, inclusive, he appears to have been in Washington by his signature to letters.

Q. Now, go on.

A. From that time until about the middle of September, I think, but certainly the first week, he was not in Washington apparently by the books.

Q. He was not in Washington, then, from the 12th day of August until some time in September?

A. No, sir. He was not here on September 7.

Q. He had not still returned on the 7th of September?

A. No, sir.

By Mr. CARPENTER:

Q. Were not several post-traders appointed under the new law before Evans was appointed; and, if so, how many? Have you examined the book to find out?

A. There were about twenty-four.

Q. Twenty-four before Evans.

A. Twenty-four appointed October 6 or thereabouts.

By Mr. Manager MCMAHON:

Q. But none of them were appointed before the 6th of October

A. No, sir.

By Mr. CARPENTER:

Q. What caused the delay in the appointments after the new law was passed?

A. I said once before that we had to call for reports from department commanders as to the number of the posts and the names of those who were then occupying the positions. Some of those reports came in pretty late. Here is one that came in August 27 from General Pope. General Belknap was away, as I testified, until about the middle of September, and there was not time to make out these things in due form.

By Mr. Manager MCMAHON:

Q. He was absent from the 12th of August to about the middle of September?

A. Yes. He being absent, there was not much opportunity to carry this law into effect until we got the list and perfected the books in some way and made our arrangements to open the books.

Major-General WINFIELD S. HANCOCK sworn and examined.

Mr. CARPENTER. I will state to the managers that we detained General Hancock here several days to prove by him several matters which we have proved already by Mr. Evans and other witnesses, so that I will simply ask him in regard to character.

Question. (To the witness.) How long have you known General Belknap?

Answer. I knew General Belknap first about 1850, but I did not see him again until subsequent to the time of his becoming Secretary of War.

Q. (By Mr. CARPENTER.) You are a West Point graduate?

A. Yes, sir.

Q. Have been in the Army ever since?

A. Yes, sir.

Q. Holding different positions from cadet up to major-general?

A. Yes, sir.

Q. In your official intercourse with General Belknap while he was Secretary of War and from all your knowledge of his management of that Department, what was it, good or bad?

A. I have never known anything to his discredit from any personal knowledge of mine.

Q. What was his reputation as Secretary of War aside from this thing on trial here?

A. I know nothing against his reputation.

No cross-examination.

Mr. CARPENTER, (to the managers.) This is our case, gentlemen.

Mr. Manager MCMAHON. We close. We have nothing to offer in rebuttal.

Mr. EDMUNDS. I move that the court adjourn.

Mr. CARPENTER. Will not the Senator withdraw the motion a moment for the purpose of having some understanding about summing up the case?

Mr. EDMUNDS. With pleasure.

Mr. CARPENTER. How much time the Senate will give us and what order we are to speak in ought to be determined before the court adjourns to-day in order that we proceed to make our preparations. On the part of the defense, the three counsel for the defense desire to be heard in the argument.

Mr. EDMUNDS. I ask that the twenty-first rule be read, Mr. President.

The PRESIDENT *pro tempore*. The Secretary will read the twenty-first rule.

The Chief Clerk read as follows:

XXI. The case, on each side, shall be opened by one person. The final argument on the merits may be made by two persons on each side, (unless otherwise ordered by the Senate upon application for that purpose,) and the argument shall be opened and closed on the part of the House of Representatives.

Mr. CARPENTER. We apply, Mr. President, under that rule for permission to have three counsel for the defendant heard. On the part of the prosecution there has already been one argument and they propose, I understand, two more.

Mr. Manager LORD. What one argument?

Mr. CARPENTER. By Mr. LYNDE.

Mr. Manager LORD. A mere opening. It had nothing to do with the final argument.

Mr. CARPENTER. It had a good deal to do with the final argument if it was a pretty good opening, and it was.

Mr. Manager LORD. In that view we concede it. Mr. President, we do not oppose the application of the other side if the Senate see fit to grant it; but it seems to me proper to suggest that the time might be limited.

Mr. CARPENTER. Upon that subject I think the thermometer is a sufficient limitation.

Mr. Manager LORD. Perhaps so.

Mr. CONKLING. Mr. President, may I inquire how many of the managers wish to be heard?

Mr. Manager LORD. I will answer the Senator. Only two desire to be heard on the question of fact. If, however, the question is to be argued here as to the effect of the two-thirds vote, then another manager desires to be heard; but on the question of fact on the final submission of the case under this rule only two of the managers desire to be heard.

Mr. CARPENTER. That leaves us all at sea as to the manner and arrangement of our argument. The managers should let us know how many of them wish to speak in the final summing up of this case. I think they may safely assume that we shall argue all there is in the case, and I think that one of the biggest points in it.

Mr. Manager LORD. Mr. President, I understood that the other day, while Mr. Manager LYNDE was proceeding to argue the question as to the effect of the two-thirds vote, he was called to order, or at least stopped by one of the Senators, on the ground that that question had been decided. If there is to be a distinct argument on that point, one of the managers especially prepared himself in that direction, and therefore that would involve being heard by three managers; but, under this Rule 21, I repeat we only desire to be heard by two managers.

Mr. CONKLING. Mr. President, I suggest to the managers and to the counsel, assuming that three on a side are to address the Senate, that they arrange among themselves their order, which probably they can do in a moment, and not call on the Senate to make an order on that subject unless they disagree.

Mr. Manager LAPHAM. Mr. President, I supposed we had already agreed on that question.

Mr. Manager LORD. Not in consideration of three managers speaking; only in regard to two.

Mr. BLAIR. Mr. President, Senators will recollect that we did not avail ourselves of our right to make a statement of the case, which is substantially always an argument upon the assumed evidence that is to be given, as the managers did on their part, expecting that all of us would join in summing up. They availed themselves of their right to open and made a very able speech, and they propose to subjoin two more upon the facts and perhaps a third upon the law. Now it seems to me that under these circumstances it is not asking anything too much of the patience of the Senate to allow all the defendant's counsel be heard.

Mr. EDMUNDS. Mr. President, if it is in order, at the suggestion of a Senator behind me, although he does not suggest the time, I move that three on each side be allowed six hours for the summing up, to be arranged between them, if they are able to arrange it, as is agreeable.

Mr. CARPENTER. Six hours for all?

Mr. EDMUNDS. Six hours to each side; twelve hours altogether.

Mr. CONKLING. I do not understand that the rule fixes any limit of time. Let it be read.

The PRESIDENT *pro tempore*. The rule does not prescribe the time. The rule will be read.

The Chief Clerk read Rule 21, as follows:

21. The case, on each side, shall be opened by one person. The final argument on the merits may be made by two persons on each side, (unless otherwise ordered by the Senate, upon application for that purpose,) and the argument shall be opened and closed on the part of the House of Representatives.

Mr. CARPENTER. I submit that six hours is too short a time. The Senate may safely assume that in the present state of the atmosphere we are not going to talk here to waste the time of the Senate. This case is an important one; it involves a great many important questions, and one certainly important constitutional question which has neither been argued nor decided; that is, what is the effect of a mere majority vote in regard to the question of jurisdiction, and we shall desire to be heard upon that and heard upon the other questions of law involved in the case and also on the facts, and I submit that six hours is altogether too short a time.

Mr. CONKLING. May I inquire now whether the managers and counsel have agreed on the order in which they will address the Senate?

Mr. Manager LORD. I understand that we have.

Mr. CONKLING. Then the only question they make is as to permission for three in place of two persons on each side to conclude the argument.

Mr. CARPENTER. And the time, which under the rule is unlimited, as I understand.

Mr. CONKLING. So I understand. Now, Mr. President, I should

like to inquire is there any motion or order before the Senate touching the number of counsel who may be heard?

The PRESIDENT *pro tempore*. There is not.

Mr. CONKLING. Then I offer an order which I will reduce to writing, that three managers and three counsel may be heard at their option in the order they have agreed upon.

Mr. EDMUNDS. I believe I have a motion pending.

The PRESIDENT *pro tempore*. The Senator from Vermont has submitted a proposition.

Mr. CONKLING. Then I will offer mine as a substitute for that.

The PRESIDENT *pro tempore*. That can be done. The Secretary will report the proposition.

The Chief Clerk read the proposition of Mr. CONKLING, as follows:

Ordered, That three managers and three counsel for the respondent may be heard in the concluding argument, in the order in which they state to the Senate they have agreed.

Mr. EDMUNDS. Now I should like to hear the original proposition.

The PRESIDENT *pro tempore*. The proposition of the Senator from Vermont will be read.

The Chief Clerk read as follows:

Ordered, That three persons on each side be allowed six hours for the summing up, to be arranged between them.

Mr. EDMUNDS. We can get at it in a shorter way. I move to amend the amendment of my friend from New York by adding thereto "and that the argument be limited to six hours on each side."

The PRESIDENT *pro tempore*. The Senator from Vermont withdraws his original proposition and moves to amend the proposition of the Senator from New York.

Mr. EDMUNDS. The Chair is mistaken; I do not withdraw it. I move to amend the amendment of my friend from New York by adding thereto "and that the argument be limited to six hours on each side."

Mr. CONKLING. I rise to a question of order. I submit to the Chair whether a Senator can offer an original proposition and when an amendment is offered to that, then offer the original proposition again as an amendment to the amendment?

Mr. EDMUNDS. It is not the original proposition.

Mr. CONKLING. I beg the Senator's pardon. It is the original proposition in substance. I object to it.

Mr. INGALLS. Is the question divisable on the amendment?

The PRESIDENT *pro tempore*. It is. The Secretary will reduce the amendment to writing and the Chair will rule on it. The Secretary will report the first proposition offered by the Senator from Vermont.

The Chief Clerk read as follows:

Ordered, That three persons on each side be allowed six hours for summing up, to be arranged between them.

The PRESIDENT *pro tempore*. The Secretary will now report the substitute by the Senator from New York.

The Chief Clerk read as follows:

Ordered, That three managers and three counsel for the respondent may be heard in the concluding argument, in the order which they state to the Senate they have agreed upon.

The PRESIDENT *pro tempore*. The Secretary will now report the last proposition of the Senator from Vermont and the Chair will rule upon it.

The Chief Clerk read the last proposition, as follows:

And that the argument be limited to six hours on each side.

The PRESIDENT *pro tempore*. The Chair understands the Senator from Vermont proposes that as an amendment to the substitute proposed by the Senator from New York. It is in order. The question is on the amendment of the Senator from Vermont to the substitute proposed by the Senator from New York.

Mr. CARPENTER. Mr. President, before that question is put, I desire to say to Senators that, if they will limit us to six hours and give us a day or two to get ready, that will be time enough; but if we are to prepare arguments now upon testimony not yet printed and which will not be printed until to-morrow morning, it seems to me the time is too short.

The PRESIDENT *pro tempore*. The question is on the amendment of the Senator from Vermont to the substitute of the Senator from New York.

The question being put, there were on a division—ayes 15, noes 29.

So the amendment to the amendment was rejected.

The PRESIDENT *pro tempore*. The question recurs on the substitute proposed by the Senator from New York.

The amendment was agreed to.

The PRESIDENT *pro tempore*. The question recurs on the order as amended.

The order, as amended, was agreed to.

Mr. CONKLING. I move that the Senate sitting for the trial adjourn.

The PRESIDENT *pro tempore*. Before that, will the Senate allow the Chair to state that the Chair understands the witnesses on both sides can be discharged? He makes that announcement so that they can leave. The Senator from New York moves that the Senate sitting for this trial do now adjourn.

The motion was agreed to; and the Senate sitting for the trial of the impeachment adjourned.

THURSDAY, *July* 20, 1876.

The PRESIDENT *pro tempore*. Legislative and executive business will now be suspended and the Senate will proceed to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

The PRESIDENT *pro tempore*. The House of Representatives will be notified as usual.

Messrs. LORD, LYNDE, MCMAHON, JENKS, and LAPHAM, of the managers on the part of the House of Representatives, appeared and were conducted to the seats assigned them.

The respondent appeared with his counsel, Mr. Blair and Mr. Black.

Mr. SHERMAN. I move to dispense with the reading of the journal of yesterday.

The motion was agreed to.

The PRESIDENT *pro tempore*. The Senate is now ready to proceed with the trial. The Senate will hear the managers in the opening of the closing argument.

Mr. Manager LORD. The arrangement, Mr. President, is that Mr. Blair opens on the part of the defense.

The PRESIDENT *pro tempore*. The Senate is ready, then, to hear the counsel on the part of the accused.

Mr. BLACK. Mr. President, I am sorry to announce to you and to the court that our colleague, who has the laboring-oar of this case in his hands and upon whose presence more depends than upon anything else I know of, has been taken so sick that it is impossible for him to be here to-day. It is a thing of the utmost import that a counselor who is to answer an argument should hear it when it is delivered. I understand that there has been an arrangement made between the gentlemen who are to speak on the other side and Mr. Blair, to which so far as I am concerned I give my full assent upon certain conditions, that Mr. Blair shall proceed with his argument first, and we have no objection that he shall make his opening and that his address shall be heard fully to-day; but we would greatly rather, and indeed we think we have a right to hope, that neither of the managers will insist upon speaking to-day in the absence of Mr. Carpenter. I suppose Mr. Blair will occupy a very considerable portion if not the whole of this afternoon, and there will be no considerable inconvenience to anybody in saying that the arguments on the other side shall open to-morrow, when we have reason to expect that Mr. Carpenter will be present.

Mr. Manager LORD. Mr. President, we shall have to leave the matter with the court in that regard. We are prepared to go on, and the managers are exceedingly desirous to have this case closed; the House is desirous to have this case closed; but sickness is a thing which we cannot contend with, and therefore we have to leave the matter with the Senate.

Mr. BLACK. Are you desirous to do your speaking in the absence of the gentleman who is to reply to you?

Mr. Manager LORD. No, sir; we are not desirous to do our speaking in his absence, but we are desirous to have this case proceed. I think I have said all that fairness requires when I say that we leave the matter with the court under the statement of the counsel.

Mr. INGALLS. Is there any order asked for, Mr. President?

The PRESIDENT *pro tempore*. No order is proposed, the Chair understands.

Mr. BLACK. We ask for something which will enable us to feel confident that after the conclusion of Mr. Blair's speech there will be an adjournment until to-morrow morning.

The PRESIDENT *pro tempore*. What is the request of the counsel? The Chair did not hear.

Mr. BLACK. For an order that Mr. Blair proceed now and make his argument, after which the court shall adjourn until to-morrow morning, at which time the managers will be heard.

Mr. SHERMAN. Is it in order to say a word on this subject?

Mr. EDMUNDS. It is not in order for Senators to speak.

The PRESIDENT *pro tempore*. Debate is out of order.

Mr. BAYARD. Mr. President——

The PRESIDENT *pro tempore*. Debate is out of order.

Mr. BAYARD. I suggest that while it is true that the argument of counsel will be reported, yet it will not be published until the day after it is spoken, and it is on that day——

Mr. EDMUNDS. Is this in order?

The PRESIDENT *pro tempore*. Debate is not in order.

Mr. ANTHONY. I hope the Senator from Delaware will be allowed to make a statement.

The PRESIDENT *pro tempore*. Is there objection to hearing a statement? [Mr. SHERMAN rose.] The Senator from Ohio rises for some purpose. Is there objection?

Mr. INGALLS. I shall object unless the debate is to be participated in by whoever desires to speak.

Mr. SHERMAN. I do not wish to speak; I am willing to vote. All I wish to say is that there are seventy-two members of the Senate who are here in great physical debility, and they ought to be considered.

Mr. ANTHONY. I hope we shall allow short suggestions to be made by any Senators. They aid us very much. I hope there will be no objection.

The PRESIDENT *pro tempore*. Is there objection to the suggestion of the Senator from Rhode Island?

Mr. WITHERS. I object.

The PRESIDENT *pro tempore*. Counsel on the part of the accused desire that the counsel, Mr. Blair, be permitted to open on the part of the defense to-day, and that the Senate then adjourn until to-morrow without any further argument. Senators concurring will say "ay."

Mr. KERNAN. I ask for a division of the question.

The PRESIDENT *pro tempore*. There is no question but on the proposition that there shall be but one argument to-day.

Mr. KERNAN. I withdraw the call.

Mr. HOWE. What is the motion?

The PRESIDENT *pro tempore*. The motion is that the counsel, Mr. Blair, be permitted to go on to-day, and that when he concludes the Senate adjourn until to-morrow on account of the sickness of his associate, Mr. Carpenter.

Mr. ANTHONY. I ask as a question of order whether, if that order is laid on the table and then the counsel go on, the question of adjournment cannot be decided when he is finished?

The PRESIDENT *pro tempore*. Certainly.

Mr. ANTHONY. Then I move to lay the order on the table. Let the counsel go on, and we can decide whether to adjourn or not when he has finished.

The PRESIDENT *pro tempore*. It is proposed to lay the order on the table.

The motion was agreed to.

The PRESIDENT *pro tempore*. The counsel will proceed.

Mr. BLAIR Mr. President and Senators, I appeal to the Senate in now approaching the consideration of this case for its final determination that the Senate may consider it with the calmness and deliberation and fairness which are appropriate to so solemn and important an occasion. I should not deem it proper to make even so brief an appeal to the Senate, if on a former occasion when this subject was discussed I had not felt that the proprieties of the occasion had not been observed by the managers on the part of the House of Representatives. On that occasion I witnessed a scene in this Senate which, I think, may be characterized as improper, when a manager, having the close of the argument, made an appeal to the Senate, pointing to the respondent here as a representative of the abuses which had grown up in the administration of public trusts during his career in public life and asked the Senate to override the question of jurisdiction in order to make that man a victim of the reaction of the public mind against the abuses of the day.

The object of such an appeal when the Senate had under consideration a question of constitutional law could be no other than to constrain the decision of the Senate, then sitting as a legal tribunal to decide an abstract question of constitutional law, by bringing to bear upon the body the aroused popular feeling against great and acknowledged abuses. The appeal of the manager was responded to by loud applause from the galleries. And the response was certainly as proper as the appeal of the manager; and that scene, which I think will hereafter be remembered with shame, was only characteristic of the spirit which has been evinced throughout by the prosecution.

The questions now to be considered are purely questions of law and evidence, and ought to be approached, I think, with deliberation and calmness and freed from the passions of the outside world and of the political campaign which is in progress, and the respondent's counsel have studiously observed that rule and have endeavored to present nothing for the consideration of this body but what arises on the evidence and the law.

The questions are:

First, whether the order dismissing the impeachment on the ground that more than one-third of the Senate have voted against the jurisdiction shall be granted;

Second, whether the question of jurisdiction be not involved in the plea of "not guilty" ordered by the majority of the Senate to be entered for the respondent;

Third, whether the facts alleged in the articles are proved; and

Fourth, whether the evidence established any improper conduct on the part of the respondent.

The two first questions will be discussed by me together, and afterward the last two. As there can be no valid decision of any question of law or fact by a tribunal which has no power to decide it, it follows of necessity that the question of the power to give a judgment is involved in giving any valid judgment, and also that it requires the same authority to determine the question of power which is required to give the judgment, because the judgment itself is a formal and solemn assertion of the power to give it.

These are self-evident propositions, and the only difficulty I apprehend in applying them here and disposing of this case upon the recorded vote of the Senate which demonstrates that the body cannot convict the respondent by the requisite two-thirds vote, arises from the attempt to evade meeting this plain proposition by a dexterous application to this special tribunal of the rule of practice which prevails in courts of general jurisdiction in regard to the time and manner of presenting and disposing of questions of jurisdiction. And because in courts of general jurisdiction the question of jurisdiction must be raised by plea in abatement, and when so raised and acted upon by the court by judgment on that plea the question is finally disposed of, it is argued that this is equally true of the action of this court on the plea to the jurisdiction filed in this case, and by insisting it requires but a majority to decide the question of the jurisdiction at that stage of the proceeding, because it is only on the final question of conviction that a larger number is required.

But this reasoning overlooks the well-settled principle that a different rule prevails in courts of general jurisdiction from that which prevails in courts of limited or special jurisdiction in regard to the time and manner and effect of making the question of jurisdiction. In courts of limited and special jurisdiction the question of power continues to the end and cannot be waived. In such tribunals it enters into and forms a part of and is formally and solemnly asserted in any judgment which may be given, and therefore it necessarily follows, when it is ascertained by the recorded vote of the Senate that the requisite number of the Senate to give its judgment of conviction cannot be had, the proceeding ought to be dismissed, just as a bill in equity is dismissed when it is ascertained at conference that the number of judges required to sustain jurisdiction to administer the relief prayed for cannot be had. This proposition is well settled by decisions of the Supreme Court of the United States in the case of Rhode Island *vs.* Massachusetts, 12 Peters, page 718, and by the Dred Scott case, 19 Howard, pages 473 and 564.

Mr. Justice Daniel's decision in the Dred Scott case quotes, page 473, 19 Howard, the passage I now read from the decisions in 12 Peters:

> The question is whether on the case before a court their action is judicial or extrajudicial, with or without the authority of law to render a judgment or decree upon the rights of the litigant parties.
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> * * * * * * *
>
> A motion to dismiss a cause pending in the courts of the United States is not analogous to a plea to the jurisdiction of a court of common law or equity in England; there the superior courts have a general jurisdiction over all persons within the realm and all causes of action between them. It depends on the subject-matter, whether the jurisdiction shall be exercised by a court of law or equity; but that court, to which it appropriately belongs, can act judicially upon the party and the subject of the suit, unless it shall be made apparent to the court that the judicial determination of the case has been withdrawn from the court of general jurisdiction to an inferior and limited one. *It is a necessary presumption that the court of general jurisdiction can act upon the given case when nothing appears to the contrary; hence has arisen the rule that the party claiming an exemption from its process must set out the reasons by a special plea in abatement, and show that some inferior court of law or equity has the exclusive cognizance of the case; otherwise the superior court must proceed in virtue of its general jurisdiction.*
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> * * * * * * *
>
> A motion to dismiss, therefore, cannot be entertained, as it does not and cannot disclose a case of exception; *and if a plea in abatement is put in, it must not only make out the exception, but point to the particular court to which the case belongs.*

As there was no such pointing to any particular court other than this to which this case belonged, in the plea in abatement which we filed, it was no plea in abatement at all. It lacked an indispensable averment to make it a plea in abatement.

> There are other classes of cases where the objection to the jurisdiction is of a different nature, as on a bill in chancery, that the subject-matter is cognizable only by the king in council, and not by any judicial power, or that the parties defendant cannot be brought before any municipal court, on account of their sovereign character and the nature of the controversy; or in the very common cases which present the question whether the cause properly belongs to a court of law or equity. *To such cases a plea in abatement would not be applicable, because the plaintiff could not sue in an inferior court.*

Hence, as the plaintiff in this case could only sue in this court, no plea in abatement would be applicable.

> The objection goes to a denial of any jurisdiction of a municipal court in one class of cases, and to the jurisdiction of any court of equity or of law in the other; on which last, the court decides according to their legal discretion. An objection to jurisdiction, on the ground of exemption from the process of the court in which the suit is brought, or the manner in which a defendant is brought into it, is waived by appearance and pleading to issue, *but when the objection goes to the power of the court over the parties*, or the subject-matter, *the defendant need not for he cannot give the plaintiff a better writ or bill. Where no inferior court can have jurisdiction of a case in law or equity, the ground of the objection is not taken by plea in abatement, as an exception of the given case, from the otherwise general jurisdiction of the court*; appearance does not cure the defect of judicial power, and it may be relied on by plea, answer, demurrer, or at the trial or hearing, unless it goes to the manner of bringing the defendant into court, which is waived by submission to the process.
>
> As a denial of jurisdiction over the subject-matter of a suit between parties within the realm, over which and whom the court has power to act, cannot be successful in an English court of general jurisdiction, a motion like the present could not be sustained consistently with the principles of its constitution. But as this court is one of limited and special original jurisdiction—

And certainly the court of impeachment is one of limited and of special jurisdiction—

> its action must be confined to the particular cases, controversies, and parties over which the Constitution and laws have authorized it to act; any proceeding without the limits prescribed is *coram non judice*, and its action a nullity. *And whether the want or excess of power is objected by a party, or is apparent to the court*—

At any stage of the proceedings—

> it must surcease its action, or proceed extrajudicially.

In the opinion of the court in the case of Dred Scott *vs.* Sanford the court said:

> Before we speak of the pleas in bar, it will be proper to dispose of the questions which have arisen on the plea in abatement.
>
> That plea denies the right of the plaintiff to sue in a court of the United States for the reasons therein stated.
>
> If the question raised by it is legally before us, and the court should be of opinion that the facts stated in it disqualify the plaintiff from becoming a citizen in the sense in which that word is used in the Constitution of the United States, then the judgment of the circuit court is erroneous and must be reversed.
>
> It is suggested, however, that this plea is not before us, and that as the judgment in the court below on this plea was in favor of the plaintiff, he does not seek to reverse it or bring it before the court for revision by his writ of error, and also that the defendant waived this defense by pleading over, and thereby admitted the jurisdiction of the court.
>
> But, in making this objection, we think the peculiar and limited jurisdiction of

courts of the United States has not been adverted to. This peculiar and limited jurisdiction has made it necessary in these courts to adopt different rules and principles of pleading, so far as jurisdiction is concerned, from those which regulate courts of common law in England and in the different States of the Union which have adopted the common-law rules.

In these last-mentioned courts, where their character and rank are analogous to that of a circuit court of the United States; in other words, where they are what the law terms courts of general jurisdiction, they are presumed to have jurisdiction, unless the contrary appears. No averment in the pleadings of the plaintiff is necessary in order to give jurisdiction. If the defendant objects to it he must plead it specially, and unless the fact on which he relies is found to be true by a jury, or admitted to be true by the plaintiff, the jurisdiction cannot be disputed in an appellate court.

Now, it is not necessary to inquire whether in courts of that description a party who pleads over in bar, when a plea to the jurisdiction has been ruled against him, does or does not waive his plea; nor whether upon a judgment in his favor on the pleas in bar, and a writ of error brought by the plaintiff, the question upon a plea in abatement would be open for revision in the appellate court. Cases that may have been decided in such courts, or rules that may have been laid down by common-law pleaders, can have no influence in the decision in this court. Because, under the Constitution and laws of the United States, the rules which govern the pleadings in its courts in questions of jurisdiction stand on different principles and are regulated by different laws.

This difference arises, as we have said, from the peculiar character of the Government of the United States. For although it is sovereign and supreme in its appropriate sphere of action, yet it does not possess all the powers which usually belong to the sovereignty of a nation. Certain specified powers, enumerated in the Constitution, have been conferred upon it; and neither the legislative, executive, nor judicial department of the Government can lawfully exercise any authority beyond the limits marked out by the Constitution. And in regulating the judicial department, the cases in which the courts of the United States shall have jurisdiction are particularly and specifically enumerated and defined; and they are not authorized to take cognizance of any case which does not come within the description therein specified. Hence, when a plaintiff sues in a court of the United States, it is necessary that he should show in his pleadings that the suit he brings is within the jurisdiction of the court, and that he is entitled to sue there. And if he omits to do this, and should, by any oversight of the circuit court, obtain a judgment in his favor, the judgment would be reversed in the appellate court for want of jurisdiction in the court below. The jurisdiction would not be presumed, as in the case of a common-law English or State court, unless the contrary appeared. But the record, when it comes before the appellate court, must show affirmatively that the inferior court had authority, under the Constitution, to hear and determine the case. And if the plaintiff claims a right to sue in a circuit court of the United States, under that provision of the Constitution which gives jurisdiction in controversies between citizens of different States, he must distinctly aver in his pleading that they are citizens of different States; and he cannot maintain his suit without showing that fact in the pleadings.

This point was decided in the case of Bingham *vs.* Cabot, (in 3 Dallas, 382,) and ever since adhered to by the court. And in Jackson *vs.* Ashton, (8 Peters, 148,) it was held that the objection to which it was open could not be waived by the opposite party, because consent of parties could not give jurisdiction.

It is needless to accumulate cases on this subject. Those already referred to and the cases of Capron *vs.* Van Noorden (in 2 Cranch, 126) and Montalet *vs.* Murray (4 Cranch, 46) are sufficient to show the rule of which we have spoken. The case of Capron *vs.* Van Noorden strikingly illustrates the difference between a common-law court and a court of the United States.

Mr. Justice Curtis delivered a dissenting opinion from the court in that case, but concurred with the court in holding that when a party pleaded over after his plea to the jurisdiction had been overruled by a court of limited jurisdiction the question of jurisdiction was not waived. I will read a few passages from his opinion to show the court his views on this point:

The part of the judicial power of the United States conferred by Congress on the circuit courts being limited to certain described cases and controversies, the question whether a particular case is within the cognizance of a circuit court may be raised by a plea to the jurisdiction of such court. When that question has been raised the circuit court must, in the first instance pass upon and determine it.

When the plea was adjudged insufficient, the defendant was obliged to answer over. He held no alternative. He could not stop the further progress of the case in the circuit court by a writ of error, on which the sufficiency of his plea to the jurisdiction could be tried in this court, because the judgment on that plea was not final, and no writ of error would lie. He was forced to plead to the merits. It cannot be true, then, that he waived the benefit of his plea to the jurisdiction by answering over. Waiver includes consent. Here there was no consent.

But little comment on these cases is necessary. They show that from the very nature of such tribunals as this is there can be no waiver of jurisdiction, even when the party himself pleads over to the merits after judgment against him on the plea to the jurisdiction. *A fortiori* there can be no waiver where a party as in this case elects to stand by his plea to the jurisdiction and to make no plea to the merits but to ask for judgment of dismissal on the vote of the Senate, whereby it appeared that there could be no judgment of conviction against him for the reason that two-thirds of the body did not concur in holding that there was power to give it, and when the so-called plea to the merits was not the act of the respondent but of the majority of the Senate itself.

It will be further seen by the case from 12 Peters that although the respondent's plea is a plea to the jurisdiction it is not a plea in abatement. Such a plea must undertake to show that some other court of law or equity has cognizance of the cause. That averment is indispensable to make a plea in abatement. This is entirely wanting in the plea filed herein, which is in effect a denial of the jurisdiction of any court. To such cases, says the Supreme Court in 12 Peters, in the opinion just read, a plea in abatement would not be at all applicable. The plea is therefore no plea in abatement, but a plea in bar, which cannot be overruled save by a two-thirds vote, because as the respondent elected to stand by this plea conviction followed on its being overruled. The failure on the part of the managers to ask for judgment is a clear recognition of the principle we here now contend for. But if the majority can assume that the majority vote only is required to defeat a special defense and that they can themselves put the respondent on another defense, which will exclude that upon which he has elected to stand, it is manifest that the provisions of the Constitution requiring the concurrence of two-thirds of the Senate to convict may be rendered absolutely nugatory. An issue can be made in any case upon which any one can be convicted by the required vote if the majority be determined, resolves to make the issues, and can overrule the defenses *seriatim* without being obliged to proceed to final judgment on them.

The managers hold that a majority can decide against this or any other plea, and that it is competent for them on motion to procure an order of the Senate that on respondent's failure to answer as directed an order can be made entering a plea for us. It is true that when the motion for such an order was made by the managers, Hon. Mr. LYNDE said that he did so to cut off any further dilatory pleas or any demurrer, which he said he had understood was to be filed to these articles of impeachment. He said there was no precedent for the allowance of such pleadings in cases of impeachment, and held that all objections could be taken, under the plea of not guilty, whether of law or of fact. Hence, when the Senate ordered the plea of not guilty to be entered, it would be implied that every defense, whether of law or of fact, could be made under that plea. The inference would be that the Senators who voted against the jurisdiction could vote in the negative on that plea.

If this view of the subject was accepted by the majority, as it is known not to be, it would not be by the minority, and hence the effect has been and will continue to the end to be most prejudicial to the respondent. It has operated unfairly, because a portion of the Senate has refused to participate in the intermediate proceedings, and all question upon the admissibility of testimony has been decided without their votes, and a still larger number of them will refuse to participate on the final vote upon the issue framed by the majority of the Senate, holding that by the vote already given the Senate has recognized its incompetency to convict the respondent, however the questions may be shaped by the majority.

When the Senate failed to convict by the required two-thirds vote upon the issue presented by special plea in bar of the respondent (for that is the nature of the plea as shown by the authorities) they held that there could be no conviction upon any other issue in the case which the majority of the Senate might frame and order to be voted upon. Hence the trial is essentially one conducted by the majority of the Senate, and it remains to be seen whether the constitutional requirement of the concurrence of two-thirds for conviction can be secured by a refusal of the majority to enter the judgment of dismissal required by that failure demanded, and proceeding to frame an issue for respondent which excludes his defense. If the respondent can be convicted by eliminating his defense in this manner, Blount might certainly have been convicted by similar action as that which it is now proposed the majority shall take, and I do not see why more than a majority should be required in any case.

The proceeding is illegal and unjust. This is certainly an attempt to put in practice an extraordinary piece of ingenuity to coerce a portion of the Senate to vote for conviction in a case upon which they have already voted they had no power to act at all. When by a recorded vote it is demonstrated that the two-thirds required to pronounce judgment of conviction cannot be had, because more than a third of the Senate hold that they have not the power to try the accused, the prosecution can be continued only upon the unreasonable expectation that the Senators mean to stultify themselves and vote for conviction when they have voted that they had no power to maintain the jurisdiction of the cause. These, I say, are circumstances utterly inexplicable, and show to the country the extraordinary character of this proceeding.

Mr. ROBERTSON. The language of the counsel strikes very hard in reference to Senators when he uses the word "stultify" in regard to their action.

Mr. BLAIR. I beg the Senator's pardon. He is entirely mistaken in supposing that I made any reflection upon Senators.

Mr. CONKLING. The counsel said unless it was expected that they would by so doing stultify themselves. It was a mere supposition; a mere hypothesis.

Mr. BLAIR. I beg to state again that the Senate may understand exactly the view I take of that matter. I said the persistence of this prosecution on the part of the managers, after this vote, seemed extraordinary to me, because it could be founded in no other theory than the expectation that Senators, who had by their solemn vote declared they had no power, would stultify themselves by assuming to have power and to pass a verdict in the case.

I shall say a few words, and a few words only, in support of the plea upon which we ask that this case be now dismissed; because, after the very able and exhaustive arguments which are to be found on the question of jurisdiction which it involves in the opinions of the Senators already published, it would be certainly a work of supererogation for me to attempt to add anything to the argument on the part of the respondent. But there is an opinion published among them which, from the high character of the gentleman who gave it as a lawyer, his reputation as a statesman, and the position he holds in the country, induces me to add a few remarks upon the positions which he has taken, and more particularly because he misapprehends the ground taken by the accused. I refer to Senator THURMAN. His inquiries are:

First. What was the legal signification of the technical term "impeachment" when the Constitution was adopted?

Second. Is that legal signification limited or modified by anything found in the Constitution?

He finds that the term impeachment in the Constitution has the common-law meaning, and that the Constitution limits the proceeding in certain particulars. The second limitation which he gives is that—

In England all the Queen's subjects are impeachable. In the United States, Blount's case seems to hold that impeachment is confined to treason, bribery or other high crimes and misdemeanors of civil officers, (the President and Vice-President included,) leaving military and naval officers to be dealt with by martial law.

He says on page 3:

But it has been earnestly contended that it makes another and sweeping change: namely, that it confines impeachment to cases where the accused is in the office which he has abused at the time of his impeachment, conviction, and sentence; and that, consequently, if at any time before sentence he resign, the jurisdiction of the Senate is at an end and no judgment can be pronounced against him.

That is an entire misapprehension of the ground taken by the respondent. The respondent, it is true, contends that impeachment lies only against those holding civil office; but he does not contend that resignation after impeachment would defeat jurisdiction any more than a surrender of property after action brought would defeat an action of ejectment, and insists that impeachment could not be tried after resignation or eviction from office any more than ejectment after the surrendering of the possession of the property. In both cases the object of the action is the eviction of the parties against whom they are brought, and the judgment would depend upon the possession of the defendant when the actions were brought, to which time the judgment relates. The Senator assumes that, in saying the House shall have the sole power of impeachment and the Senate the sole power to try by impeachment, the Constitution confers the unlimited power of impeachment exercised by the houses of the British Parliament, and that this power is limited only by the other provisions of the Constitution. It might be argued with equal reason that because the executive power is vested in the President and the judicial power in one Supreme Court, &c., that the President and judiciary have the unlimited power of the executive and courts of England unless limited by subsequent provisions; whereas the settled construction of the Constitution by all parties has been that these clauses only designate the officers who are to execute such executive and judicial functions as the Constitution expressly or by necessary implication grants. So that by parity of reason the clauses relating to the impeachment by the House of Representatives and trial by the Senate mean only that these bodies shall impeach in the cases provided for in that instrument.

It is the first time in the history of the Government that power has been claimed because "it is not pretended that any provision of the Constitution explicitly denies" it. That is a most extraordinary position to take at this time in the history of our Government. That the Constitution does not authorize the impeachment of any but civil officers or those who have been civil officers the Senator says was the judgment in the Blount case; but this decision could only have been reached by overruling the theory upon which his opinion rests, for the contest in that case, as in this, was whether the Constitution granted the whole common-law power of impeachment or granted only the power to impeach given in the fourth section of the second article. It was not pretended in the argument of that case that the fourth section of the second article was a limitation upon the general grant of power. It was contended by the advocates of unlimited power that the only meaning of this section was that the officers named therein *must be removed from office on impeachment*, while the advocates of limited power contended that this section itself enumerated all the cases which the House could present or the Senate try. The Senate adopted the latter view of the subject. The Senator says that—

The Senate in that case, whether correctly or not it is unnecessary now to decide, seems to have considered the section as an enumeration of the causes for which an impeachment will lie and of the persons who commit the impeachable offense.

As the Senator has admitted that this clause of the Constitution of itself gives no power to the House to impeach or the Senate to try General Belknap, he has to fall back on the power of the general grant which he admits the decision in Blount's case repudiates. If there had been any such general grant of power the decision in Blount's must have been different, because it was not pretended in the argument of that case that the fourth section of the second article was or could be construed as a limitation upon the general power. That is manifestly either itself the grant of the power to impeach, and if so necessarily the exclusive enumeration of the cases in which impeachment would lie, or it is simply as contended in Blount's case, a requirement that the class of officers named in it shall be removed from office on impeachment. The Senator then argued that the clause as construed in Blount's case does not limit *the time* but only the persons, and is similar to sections 5501 to 5504 of the Revised Statutes. The difference, however, between these sections of the statute law and the fourth section of the second article is that the requirement of removal in the latter forms part of the description of the persons to whom it is applicable. It says distinctly that the persons subject to impeachment are those who can be removed, for it says that they shall be removed on impeachment. It is mandatory. This being the interpretation of Story and the practice heretofore, it ought not to be disturbed unless palpably wrong.

Now I proceed to consider the articles upon which this trial is to proceed. These are five in number. I ask the especial attention of the court to the point I am going to make on these articles, because the question here is not whether General Belknap has committed some great offense, has committed some immorality, or has demeaned himself in some general way improperly in office; but the question for your consideration here now is whether he has committed the irregularities and the crimes which are described in these five articles. What are those articles?

The first article charges that, Belknap having promised the appointment of post-trader to Marsh and Marsh having entered into a contract with Evans, Belknap appointed Evans, corruptly received certain sums of money from said Marsh in consideration of said appointment, and did receive from Marsh like sums in consideration of his permitting Evans to continue to hold the same. Consider that charge. It charges that Belknap promised the appointment of trader to Marsh; that Marsh entered into a contract with Evans in regard to it; and that Belknap appointed Evans upon a corrupt bargain that he should receive certain sums of money; and that he continued him in office that he might receive those sums of money. You will observe that this is not charged in the technical language of the law as bribery. The Judiciary Committee, by which this article was framed, did not see their way clear to make that charge. The evidence did not, in their judgment, warrant them in charging General Belknap with having received a bribe; yet by circumlocution they have made a charge which no sensible man can distinguish from that charge. If it is not a charge of bribery, it is not a charge of anything.

You will observe that the learned manager who opened this case did not analyze the articles or attempt to explain how the evidence which he proposed to introduce would substantiate the charges made in the articles against the defendant. Not one of the managers has undertaken to analyze the charges and show what they are; but I say that no rational mind can make anything else of them than a charge of bribery. I want the managers when they come to speak to tell the Senate what they mean by these charges. I should like now to know whether the leading manager will rise in his place and tell whether he undertakes to charge bribery or not. There is no response. You will have to inquire for yourselves. The prosecution will not tell us whether they mean to charge bribery or not; but I say that no other construction can be put upon the charges. The charges are all identical in purport and legal intent with the first. I have analyzed them carefully, I have paid a great deal of attention and spent a good deal of time in drawing the page and a half, two lines apart, that I have written here in analyzing these charges. I am giving the Senate the benefit of my analysis in simple language, and will state the purport of each one of these charges. The first I have given.

The second article charges that Belknap received $1,500 from Marsh in consideration that he would continue to permit Evans to hold the appointment; that is, in consideration that he would continue to permit him to hold this appointment he received $1,500; that is, he received the money in consideration of the continuance of the man in office. Article 3 charges that Evans to procure the appointment agreed to pay Marsh, and did pay him, and that Marsh paid Belknap one-half; that Belknap knew these facts, and yet continued Evans in office for the purpose of getting the money from Marsh.

New phraseology is used, but it is only the same thing stated in a variety of ways. Article 4 charges that he received the money in consideration of the appointment and gives fifteen specifications of dates and sums. Article 5 charges that Belknap continued Evans in office in order that he might receive the money. These articles, I repeat, all charge bribery. This cannot be controverted, and there can be no reason for not making the charge distinctly and squarely and not by circumlocution but a consciousness that the evidence does not substantiate it. It is a confession, by the frame-work of the articles themselves, that the gross fact which they mean but do not assert cannot be substantiated.

Having considered the purport of these charges, let us consider the proof in support of them; and for the purpose of showing you how entirely the case fails I shall take the proof in its strongest light against the accused. I will therefore assume for the purposes of this branch of the argument that the defendant knew the money he received from Marsh was derived from Evans; that it was proved that Marsh remitted and that Belknap received all the money charged to be remitted and received in the several articles; that the defendant knew that the money was received by Marsh from Evans; that it was a very great impropriety for him to receive the money, and that he was conscious of that impropriety. This is certainly all that any candid man will claim to be proved by the prosecution.

If the proof stopped here it might be argued that the receipt of the money implied that the appointment of Evans had been made in consideration of it, and that he was retained in office in order that he might continue these payments; but the testimony does not stop here. It does not stop with the proof of the appointment and of the making and receipt of the remittances. The witness who proves the remittances directly and positively disproves the fact sought to *be inferred* from the appointment and subsequent remittances, and proves that the remittances were not made in consideration of the appointment or of the continuance of the party in office, by showing that the appointment was given on an entirely different consideration and that no suggestion was ever made at the time of the appointment or subsequently that any pecuniary consideration should

be given for it; that the division of the bonus which he subsequently made was the suggestion of his own mind and wholly voluntary, and that the moneys were in fact presents which he felt entirely at liberty to make or to withhold; that the appointment was not made upon any promise or understanding that such payments should be made, nor were they subsequently made to procure the continuance of Evans in office. Thus affirmatively and directly the witness upon whom the case of the prosecution rests, in the most positive and emphatic language which the English affords, denies the whole inference which is sought to be made against the respondent. I must trouble the Senate at this point to read the testimony of this witness on this subject on page 178 of the RECORD:

Mr. CARPENTER. (To the witness.) Was there any agreement on your part to pay Mr. Belknap any money in consideration that he would appoint you post-trader at Fort Sill?

Answer. There was not.

Q. (By Mr. CARPENTER.) At any time?

A. At any time.

Q. Was there ever any agreement between you and Mr. Belknap that you should pay him any pecuniary consideration for or in consideration of his appointing Mr. Evans post-trader at Fort Sill?

A. There was not.

Q. Was there ever any agreement between you and Mr. Belknap that you would pay him any money or other valuable consideration in consideration of his continuing Mr. Evans as post-trader at Fort Sill?

A. Never.

Q. So far as you know was not the only inducement leading to that appointment the kindness which you and your wife had shown to Mrs. Belknap at your house?

A. That certainly had a great deal to do with it, I presume.

Q. Did you make or claim to have any bill against him for anything done for Mrs. Belknap?

A. No, sir.

Q. Your treatment of her was entirely gratuitous?

A. Yes, sir.

Q. But of course led to a feeling of friendship between the families?

A. Yes, sir.

Q. You say that the friendship which arose from the fact that Mrs. Belknap had been sick at your house, and been kindly treated, had a great deal to do with that appointment; was there, apart from that friendly feeling, any consideration moving from you to Belknap to procure that appointment?

A. None.

* * * * * * *

Mr. MITCHELL. I send a question to be put to the witness.

The PRESIDENT *pro tempore*. The question put by the Senator from Oregon will be read.

The Chief Clerk read as follows:

Q. Why did you send to W. W. Belknap, Secretary of War, the one-half of the various sums of money received by you from Evans at Fort Sill?

* * * * * * *

The WITNESS. Simply because I felt like doing it. It gave me pleasure to do it. I sent him the money as a present always, gratuitously. That is the only reason I had.

* * * * * * *

Mr. LOGAN. I desire to propound a question which I send up in writing.

The PRESIDENT *pro tempore*. The question of the Senator from Illinois will be read.

The Chief Clerk read as follows:

Q. Prior to the sending of the first money, had you said anything to any person or had any person ever said anything to you on the subject of sending money to General Belknap; if so, who was it?

* * * * * * *

The WITNESS. I had a conversation with the present Mrs. Belknap on the night of the funeral in Washington.

Mr. Manager LAPHAM. That was after the first money was sent.

Mr. Manager McMAHON. The question calls for conversation before any money was sent.

The WITNESS. That was before I had sent any money to him. I had sent a remittance to her.

* * * * * * *

Mr. LOGAN. Before the point is submitted, I will state that the first question I propounded was not objected to by the Senate. The last one was objected to. I desire to have that first question fully understood, and I ask the Clerk to read it again to the witness and have it answered before we proceed to another question.

The PRESIDENT *pro tempore*. The interrogatory propounded by the Senator from Illinois will be read.

The Chief Clerk read as follows:

Q. Prior to the sending of the first money had you ever said anything to any person or had any person ever said anything to you on the subject of sending money to General Belknap, and, if so, who was it?

A. No one that I remember. No other except what I have already stated, the conversation with Mrs. Bower.

* * * * * * *

Mr. MORTON. I submit the following interrogatory:

Q. Did General Belknap personally or through any person or by letter ever inquire of you why this money was sent, and did you in any way ever assign a reason to him for it?

A. Never to my best recollection.

Mr. CONKLING. I propose a question which may have been answered in substance, but I should like to have an answer to it:

Q. Was your intention to send money to General Belknap and your act in sending it in consequence of any communication between you and General Belknap? And, if there was any such communication, state it.

A. No, sir; there was not.

* * * * * * *

Mr. LOGAN. I desire to ask a question which I send to the Chair.

The PRESIDENT *pro tempore*. The question propounded by the Senator from Illinois will be read.

The Chief Clerk read as follows:

Q. From the conversation with the present Mrs. Belknap, mentioned by you in your answer to my former interrogatory, you spoke of an understanding with the former Mrs. Belknap, now deceased. Please state what that understanding was.

* * * * * * *

The WITNESS. I think not.

Mr. CONKLING. What does the witness mean when he says he thinks not?

The WITNESS. I do not think I stated that I had an understanding with Mrs. Belknap.

Q. (By Mr. CARPENTER.) As I understand, the first money that you sent was sent to the former Mrs. Belknap, now deceased?

A. Yes, sir.

Q. And that was sent without any arrangement between you and anybody?

A. Yes, sir.

Q. A clean, clear present?

A. Yes, sir.

* * * * * * *

Mr. MORTON. I propose the following question:

Q. How often after the first money was sent to Belknap and before your examination before the committee of the House did you meet General Belknap, and was the money ever referred to in conversation at any of these interviews?

A. For the first two or three years, I saw him perhaps two or three times a year. The first money I sent General Belknap must have been in the spring of 1871. I suppose probably through that year and 1872 and 1873 I met him two or three times a year; but I have no recollection of the money having been referred to in any conversation between us.

By Mr. Manager McMAHON:

* * * * * * *

Q. What is your best recollection as to whether you did or did not have a conversation with him personally, while you were here attending the funeral of his second wife?

A. I can only state that I have a very indistinct impression about it. I have sometimes thought that I said something to General Belknap on the night of the funeral, but I sometimes think I did not, and that the only conversation I had was with Mrs. Bower.

By Mr. CARPENTER:

Q. Is there any way in your mind to strike an average between those two impressions?

A. I cannot. I never shall know; I never shall be certain about it.

Q. The Senate will never know from you, then?

A. I have thought about it night and day, but the more I think about it the less I know.

In this connection I propose also to read what the witness said in his examination before the Committee on the Expenditures of the War Department. In that statement, on page 191 of the RECORD, he said:

The WITNESS. In reply to your questions, I would state that in the summer of 1870 myself and wife spent some weeks at Long Branch, and on our return to New York Mrs. Belknap and Mrs. Bower, by our invitation, came for a visit to our house. Mrs. Belknap was ill during this visit some three or four weeks, and I suppose in consequence of our kindness to her she felt under some obligations, for she asked me one day in the course of a conversation why I did not apply for a post-tradership on the frontier.

* * * * * * *

Mrs. Belknap and Mrs. Bower returned to Washington, and a few weeks thereafter Mrs. Belknap sent me word to come over. I did so. She then told me that the post-tradership at Fort Sill was vacant; that it was a valuable post, as she understood, and that she had either asked for it for me or had prevailed upon the Secretary of War to agree to give it to me. At all events, I called upon the Secretary of War, and as near as I can remember made application for this post in a regular printed form. The Secretary said he would appoint me if I could bring proper recommendatory letters, and this I said I could do. Either Mrs. Belknap or the Secretary told me that the present trader at the post, John S Evans, was an applicant for re-appointment, and that I had better see him, he being in the city, as it would not be fair to turn him out of office without some notice, as he would lose largely on his buildings, merchandise, &c., if the office was taken from him, and that it would be proper and just for me to make some arrangement with him for their purchase if I wanted to run the post myself. I saw Evans and found him alarmed at the prospect of losing the place.

* * * * * * *

Mr. Evans first proposed a partnership, which I declined, and then a bonus of a certain portion of the profits if I would allow him to hold the position and continue the business. We finally agreed upon $15,000 per year. Mr. Evans and myself went on to New York together, where the contract was made and executed, which is herewith submitted. (Paper marked A.) During our trip over, however, Mr. Evans saw something in the Army and Navy Journal which led him to think that some of the troops were to be removed from the fort, and that he had offered too large a sum, and before the contract was drawn it was reduced by agreement to $12,000, the same being payable quarterly in advance.

When the first remittance came to me, very probably in November, 1870, I sent one-half thereof to Mrs. Belknap, either, I presume, certificates of deposit or bank-notes, by express. Being in Washington at a funeral some weeks after this, I had a conversation with Mrs. Bower to the following purport, as far as I can now remember, but must say that just here my memory is exceedingly indistinct, and I judge in part perhaps from what followed as to the details of the conversation. I went upstairs in the nursery with Mrs. Bowers to see the baby. I said to her, "This child will have money coming to it before a great while." She said, "Yes. The mother gave the child to me, and told me that the money coming from me she must take and keep for it." I said, "All right," and it seems to me I said that perhaps the father ought to be consulted. I say it seems so, and yet I can give no reason for it, for as far as I know the father knew nothing of any money transactions between the mother and myself. I have a faint recollection of a remark of Mrs. Bower that if I sent the money to the father that it belonged to her, and that she would get it anyway.

Further on in this same testimony the court will see in what light these remittances were probably viewed by the respondent. I quote from page 192 of the RECORD:

She—

Mrs. Belknap, says the witness—

wanted me to go before the committee and represent that she and I had business transactions together for many years and that all this money I had sent the Secretary was money that she had from time to time deposited with me as a kind of banker, and that she had instructed me to send it to the Secretary for her.

To these last extracts I call particular attention, because they are contained in the testimony which the managers produced to prove a confession or admission by the defendant. The testimony was put in by them for that purpose, and of course that part of the testimony which controverts the accusation is as good for us as the other part, if there is any such thing in it, is good for them.

In the course of this examination a Senator made an argument to the witness in the form of a question, implying that remittances by installments were inconsistent with his assertion that they were presents. In the absence of positive proof to the contrary regular remittances of equal sums carries an implication of payment, but not more than a single remittance could convey; and the positive asser-

tions of the witness that the remittances were all presents is as credible as if he had spoken of one remittance only. And the circumstances stated by witness in explanation of the transaction show that the number of remittances do not any way affect the character of the transaction at all. He says that when he transferred the place to Evans he at the time of the transfer resolved to give the Secretary's wife one-half of the bonus. If the bonus had been a round sum paid in hand and he had handed over to Mrs. Belknap one-half of it, not in pursuance of any agreement or understanding express or implied to that effect, but from a feeling of gratitude, as he expresses it, it could not be pretended that the defendant had either given the appointment or retained the appointee in office in consideration of a contract for money.

It does not alter the character of the transaction that the bonus was not paid in hand but was paid in installments as it was received, and a contract could no more be implied from a remittance of the one-half of the bonus in installments than it could be from the remittance of a round sum. As the witness swears positively that the appointment was not made for any pecuniary consideration and that the appointee was not continued in office for any such consideration, it cannot be inferred that the officer would have been removed on failure to pay.

And this view of the case is demonstrated by the course of the managers to accord with their own line of reasoning. They studiously suppressed the facts showing the origin of the appointment. This could only have been done because they felt that the disclosure of the origin of this appointment and the nature of the consideration on which the witness expressly declared that it was conferred was fatal to the charge made in the several articles of impeachment. What other motive could they have had for failing to require Marsh to give his story in the chronological order he had given it before the Committee on Expenditures in the War Department but the conviction this proof negatived the conclusions they sought to draw from the unexplained facts of the appointment and the remittances which followed? They evidently supposed that we would not supply that deficiency, because we had shown so strong an indisposition to bring before the public the names of those with whom Marsh had dealt in the beginning, and they did not anticipate that we would strike out the key-stone of the arch of presumption upon which they had built. They rested their case without asking their witness whether the statement made in the articles as to the consideration on which those remittances were made was true. Without mentioning anybody's name, we asked their witness that question, and the answer is a direct and positive contradiction; and the result is that all the articles are proved to be absolutely false by the only witness who is adduced to substantiate the consideration of which this appointment was made, which is the point on which the case presented in each one of the articles turns.

There are a number of immaterial circumstances upon which the managers rely indirectly to defeat the effect of this direct testimony on the part of their own witness. They undertook to show, *first*, that Marsh had said, in a conversation with Belknap had in the spring of 1872, that he had a contract with Evans, and also that that fact appears in Colonel Grierson's letter written in answer to the inquiries made by the Secretary of War on the publication of the famous article in the New York Tribune of 1872. But if the Senate will advert to the facts under which this appointment was made, it will see in a moment that Grierson's and Marsh's statement on that point was important. After the promise had been given to Marsh, Evans appeared here, and an interview took place between Marsh and Evans, the result of which was that Marsh applied to the Secretary to let the appointment stand in Evans's name, as that would be more convenient for him at the time. When Evans applied, and told the Secretary how large an amount of money he had invested in buildings and in goods at the station, the Secretary told Marsh, as Marsh testifies at page 164 of the RECORD, that he must make some arrangement with Evans, and that he would not appoint him unless he did so. This is Marsh's account of the interview.

> A. He said he would appoint me to this place, post-trader at Fort Sill, I think, and he then told me that I had better go and see Mr. Evans; that he was in the city and an applicant for re-appointment; and that if I was to run the post myself I think he said I ought to make an arrangement with him to buy out his stock of goods and his buildings, because it would not be fair to turn him out of his position without buying out his stock and buildings; it would ruin him, or something of that kind, and he would not consent to it.

The Secretary had therefore said to Marsh that he would not consent to allow him to ruin Evans, and that he must go and make some arrangement with him by which their matters could be accommodated.

Marsh's statement which I have just read you from his testimony before the Committee on the Expenditures of the War Department is to the same purport, hence the Secretary had required Marsh to arrange with Evans. Marsh had accordingly made the required arrangement, and Marsh had notified the Secretary that he had made it; and it is also in evidence here that Evans communicated to the Secretary through Marsh. What other conclusion could the Secretary have formed in relation to them than that there were business arrangements between Marsh and Evans, and if business arrangements existed was it not fair to presume that it was a partnership? That relation was implied as it seems to me in the terms of Marsh's letter, in which he says that he wanted the business to stand for the present in the name of Evans, for the reason that it was not convenient for him to take charge of it himself. So when it was afterward disclosed to the Secretary by Marsh, in a conversation, that he had a contract with Evans, and when Colonel Grierson writes to him that he learns Evans makes remittances to Marsh, this was no more than the Secretary would have inferred from the facts already within his knowledge.

The question is simply whether it was wrong for the Secretary to appoint Marsh, his friend, and not to appoint Evans, with whom he had no such relations. Will the Senate hold this to be an offense? We may have a very defective civil service. I am not here to recommend favoritism in the administration of public affairs. But who is there in this body, or among the managers, or in the House they represent, who has not recommended his friends for appointment to office over those who were strangers to him? Who has not given place to friends when he had the power to do so? If this be an offense, it is one which few of those I am now addressing have not committed, and it would be a sufficient answer to the accusation to say, "He that is without this sin among you let him cast the first stone."

No inference derogatory to General Belknap can be drawn from the fact that he used his political power to give position to one who had been kind to those who were dear to him. It was a political appointment, and he disposed of it after the manner of the times, as he, as all know, the heads of Departments, and members of Congress, and other public men dispose of or recommend the disposal of such appointments. The crime comes in only when the party who makes or recommends such an appointment does so for pecuniary consideration to himself. He may have made all his appointments from favoritism, without justifying any unfavorable inference here. Indeed the evidence shows that, while he was doing what everybody else does in giving places to their friends, he did not indulge his kindly feeling so far as to be unjust. He maintained in this transaction the character for justice which all who have associated with him attribute to him. He therefore made it a condition with Marsh that he should make some arrangement with Evans by which Evans's just rights should be saved.

Evans had no right to the place. Congress, in passing the act which turned him out and put the power of making appointments in the hands of the Secretary of War, adjudged that he had no right to the place. He therefore had no possible claim upon the Secretary of War for the continuance in the place, but he had invested largely in building and transporting merchandise there, and thus entitled to some consideration, and he was certified to also as an upright man, and it was therefore but right that the Secretary, in exercising the right given by Congress to supersede him by a personal or political friend, should require his friend to make some arrangements to save the incumbent from ruin. And this the Secretary required absolutely. And now it is sought to turn this circumstance against him. If he had been the mercenary which it is sought to represent him to be, he would not have interfered. He would have given Marsh the place unconditionally to make the most of it for division between them. But he takes directly the contrary course, and in the spirit of an honest man exacts justice from Marsh for the stranger.

In this case, as the evidence shows, the consideration originated in his private relations. The man and his family had been kind to Belknap's family, but he nevertheless imposed it as a condition that he must bring political indorsements, and he promised and finally secured the usual political indorsements upon which such offices are given, and we have here on file with the appointment the recommendation of a man of very great eminence in politics in the West, and it appears by the record that one of the most distinguished members of this body also joined in the recommendation, whose recommendation has probably been lost. It is not at all the habit of the Departments to preserve mere recommendations to office after a certain number of years have elapsed; it would overwhelm the archives to keep the voluminous recommendations that are put there for office, and therefore they are not retained for any number of years, nor are they preserved with any special particular care after the appointments are made, and hence it is not at all remarkable that the recommendation of one of the gentlemen whose names entered upon the book as having joined in the recommendation of Marsh is not to be found. There is record evidence that there was such a recommendation, if it be important to consider it all.

But the case was disposed of just as other cases have been disposed of; the position given to a political friend of the Secretary, on the recommendation of his political friends, because he is certified in this recommendation by Mr. Stevenson to be a good republican was a passport to office not at all peculiar to this Administration. It is the habit of all administrations to confer office on their political friends. Hence this case, so far as the appointment goes, stands upon no different footing from any other appointment. It is the appointment by an officer upon considerations of which he alone was the proper judge and made so by the law, and that appointment was conferred upon his friend, and he yet obliged that friend to make just terms with the incumbent.

Hence the knowledge which the respondent had of the relations between Marsh and Evans, that Marsh did not go there himself to carry on the business, but that Evans was carrying it on, and that he received communications through Marsh of Evans's wants, and acted upon them in the due course of official proceedings, was a ground for the assumption that he had a contract of some kind with Evans, and probably a partnership. This also the respondent knew accorded

with the usages of the service, as testified to by Evans himself. Both the men who had been there before, Durfee and Peck, were partners in business, and did not live there at all, and yet they had tradership at that point, and were carrying them on at that time, at this very Fort Sill by other persons, while they themselves lived at Saint Louis or elsewhere. So the Secretary naturally supposed that Evans was a partner of Marsh, upon whom and through whose influence the appointment was conferred, and it was nothing extraordinary, and no assumption derogatory to him can be based upon it, that he knew that there was a contract between them and that Marsh was receiving money from Evans.

Another circumstance upon which great stress is laid in this group of trifles is that complaints were made by Evans through Marsh. I have explained that in connection with what I have already said about the knowledge of the contract, and I shall pass to other considerations.

The third is the whisky order. After the great amount of time with which the explanation of that matter occupied the Senate and the complete refutation which was made by the official orders that there was involved in the whisky order any favoritism to Marsh and Evans, it cannot be necessary for me to dwell at any length upon this matter. A great stress, however, was laid upon it as a great stress is laid upon all these circumstances, and I think the Senate ought to infer from the stress laid on these unimportant circumstances by the prosecution the absolute poverty of the case on the part of the prosecution.

Think of the time, of the trouble, of the attention of this body, which has been attracted to this whisky order for the argument it was supposed to afford in support of the charges by showing Belknap's interest in Evans's affairs, and an immense importance was attached to it by the prosecution for that reason; and when you come to sift it down what is it? It appears that the officers at Fort Sill themselves wanted the post-trader to have the liberty to introduce a larger quantity of liquor at one time than he was allowed by the existing regulations to introduce, and that the application being made by the post-trader for that liberty, it was referred by the Secretary of War to the several officers in due order of their grade, the subject duly considered, and the order given after each one of these subordinate officers had severally and *seriatim* given his sanction to it. When the Senate see the enormous weight that is attached to this petty and paltry and utterly insignificant circumstance; the days that have been exhausted here in this sultry season; the weight that these gentlemen have laid on this immense whisky favor as they supposed, and then see how it all vanishes to nothing, you cannot fail to see how utterly frivolous and trifling and ridiculous the pretense is that Belknap went out of his way to help Evans because he knew he was interested in his business. It is enough to show that the order in relation to whisky, after it had been considered and reported on in due form by the post-commander, by the division commander, and the department commander, is freely left entirely to the commander of the post and revokable at his pleasure, whenever the necessity for it ceased.

Now pass to another one of these mighty and wonderful favors adduced with such a parade of circumstance to destroy the character of this respondent, and that is the grant of this extraordinary favor of the extension of the military reserve. It is true that the application was made by the trader; but it is also true that it ran the gauntlet of the military ordeal, went from post commander to division and department commander, to the Adjutant-General, and to the Interior Department, came to the Secretary, and finally to the President himself, and the question discussed and duly considered by all these various officers as to whether it was a proper order to be made for the public service, and only passed on and granted by the Secretary of War when it had come up from every one of the subordinate posts, sanctioned and indorsed by every one, and finally approved by the President of the United States with all the sanctions going before him. It does seem to me that it is one of the most significant things connected with this case that these parties should undertake to impeach their own witness by adducing such circumstances as those I have been considering. The object of the group of circumstances upon which I have been commenting is to contradict Marsh, who swears that Belknap had no contract with him under which he received the remittances in question. They wish the contrary to be inferred by showing that Belknap took a lively interest for Evans and such as evinced a knowledge on his part that he had a pecuniary interest dependent on Evans's success; and the attempt is to show that the Secretary of War manifested some great and extraordinary interest in this post-trader because he granted these extraordinary favors. What do these favors consist of? Nothing but these two matters, which are mere matters of military detail and ran the gauntlet without any suggestion whatever emanating from the Secretary in favor of them at any time until they came back to him, having passed through all the subordinates and with their approval before he puts his signature to them.

Another fact to which undue importance is attached is the possession by respondent of the short letter addressed to the Secretary by Marsh recommending Evans's appointment. One of the managers has spoken of the removal of that letter as the "purloining" of it, or some equivalent phrase. The witness Crosby does not remember how he came to deliver up that letter, whether it was delivered up with a bundle of letters or separately.

The argument will be that the Secretary sought to possess himself of this letter to suppress it as evidence of his guilt. But this is repelled by the fact of record that the contents of that letter were entered on the Adjutant-General's books. The letter was written for no other purpose than to ask the Secretary to send Evans's appointment to him, Marsh, at some place in New York. That is the purport of the letter. Now this is entered on the Adjutant-General's book, and the fact was also communicated to Congress with the list sent upon the demand of the committee investigating this matter. That fact, which is supposed to be so damaging to the Secretary, is communicated to Congress, is recorded on the books of the Adjutant-General; but all this fuss is made because the letter itself, consisting of three lines and communicating no more than that the appointment be sent to him, Marsh, was handed to the Secretary after his resignation. Marsh was one of the persons on whose recommendation the appointment had been made, and the most influential person, too; and he was accordingly entered in the books of record by the Adjutant-General as the party to whom the appointment was sent. All those facts appear and are recorded in the books of the Adjutant-General's Office, and are communicated to Congress before these proceedings are initiated. If the Secretary had been guilty and eager to hide his footsteps, and regarded this letter as one of them, would he have communicated the contents of the letter to Congress? There really is nothing in the letter. There is no circumstance connected with it that I can see of any importance, unless it be that it can be made out that the Secretary stole it. That would be a circumstance to communicate an interest to it; but I do not see anything else to give the least interest to it; because, when examined by itself, when analyzed with all my powers, I see no inference to be drawn from the possession of the letter to the prejudice of the respondent. And yet it is certain that that letter will figure in this argument as a damning circumstance to fix guilt. It does seem to me that the importance attached to such trifles shows the barrenness and poverty of the case on which the prosecution rests.

Another one of the group of circumstances is that the Secretary was invited to read the examination made by the Committee on the Expenditures of the War Department; that he read the evidence which is spread on this record; and that he resigned after reading that paper. Does it signify more than an indisposition to meet this trial or make a contest publicly about the facts which were there communicated? Taken in its strongest aspect, it proves nothing more than the evidence he read implies. Now I insist that if we should demur to that evidence it does not convict the respondent of the offenses charged, because, as I have already said and as I shall now proceed to show, the evidence of that witness, taken in connection with other circumstances in this case, absolutely negatives the charges here presented.

Passing from the consideration of the articles and of the proofs of these articles I come to the fourth head of the argument which I have submitted, and that is, What evidence is there here to show that the Secretary has committed any impropriety? By an analysis of these articles and by an analysis of the testimony adduced in support of them, by a brief consideration of every circumstance that is brought forward to sustain them and to negative the testimony of the witness who positively disproves the *gravamen* of these charges, I have endeavored to satisfy the Senate that these articles cannot be sustained by the proof. But I go further, and assert that the proof fails to establish anything derogatory to the Secretary.

If there is anything which may seem to derogate from General Belknap as the case stands it is because, and only because, the whole truth has not been brought to light. The managers have purposely, as I have already shown, suppressed a great part of it, and although their motive for doing this has not been kindness to General Belknap, he is glad that they have taken that course, and he obliges his counsel to follow their example, because it is not necessary, in their judgment, to his acquittal on the charges to go further into the matter, and for other reasons which every intelligent and true man can appreciate. All the heads of the Departments, and every other officer of high grade in the country of every branch of the service, and the man even with whom this inquiry originated, have been brought here and have borne testimony to the rectitude of the Secretary in his great office.

One of the ablest, certainly, and one of the purest men that ever sat upon the supreme bench, a man whose vigor of intellect every lawyer admires, who has known this man for thirty years, to mark his sympathy for him in his trials and his confidence in his integrity came into this body before he was brought here to testify, and sat down by the respondent's side when by reason of the obloquy which had been heaped upon him by the organized assassins of character in the sensational press he was shunned as a leper. When that brave and true man was afterward brought to the stand to testify to the character of the respondent no one who heard him could fail to have been impressed. Judge Miller said he had known Secretary Belknap; he had known him for thirty years, he had known him in times of trial, he had known him during his financial embarrassment and when he was in distress, and had never known any man bear himself more honorably in trying circumstances than General Belknap.

We have had similar testimony from other quarters: from the two Senators and Representatives from Iowa, from a former governor and a supreme judge of that State, all of whom have known this respond-

ent in and out of office, in private and in public life, who have testified to his honorable, just, reliable, and faithful career in office and in private life. His administration in all save the isolated charge here presented has also been vindicated by the committee which presented this charge. It appears by the testimony of Mr. CLYMER that the respondent's official career has been ransacked. That committee have sat in judgment on him for the last five months to explore every transaction. The House of Representatives reserved the right in preferring these charges to add to them, if this search, which they ordered to go on and have continued, as the witness said, until after this trial commenced, should reveal anything. But it has been utterly fruitless. Nothing is found to stain this man's record but this single transaction. And do not forget, Senators, that the respondent distinguished himself in the service of his country. For the sacred object of preserving the Government which you are here administering he freely offered his life and bore all its hardships, and by his valor and his self-denial aided in perpetuating this glorious fabric of government. He was put in his high position by the Chief Magistrate of the nation because of his distinguished services in that honorable field. Such a man ought not to be dishonored by a vote of this body upon proof relating to a single transaction in a career otherwise remarkable for its severe integrity and justice except upon proof which fixed this stigma upon him in the clearest manner. There is no such evidence here.

There is no convincing proof in the record that General Belknap ever knew that the money remitted to him was derived from Evans at all. The witness Marsh says explicitly that he had no reason to believe that the Secretary knew of the first remittance to the deceased Mrs. Belknap. He pointedly repeats in this examination this which he had said in his first examination. He says when Mrs. Belknap died he came to this city, and that after the funeral he was invited by Mrs. Bower to go up into the nursery and see the child, and while he stood looking at it he said to Mrs. Bower, "This child will have money coming to it by and by." "I know it," said Mrs. Bower, "and you are to give it to me for the child; I am to keep it for the child." He says he thinks that he remarked that the father ought to know something of it, but his memory does not serve him. Now, Senators, consider that that was the day of the funeral. Is it at all likely that he would have brought such a subject to the attention of a man with such an affliction so green upon him? The witness Marsh will not say that he did. On the contrary, he has veered from one to another opinion on the subject, and concludes as his better judgment that he did not then say anything about it to the Secretary, and he is certain that he never did afterward. It is, therefore, certain he did not tell the Secretary at any time where the money he subsequently remitted came from.

Recollect then, Senators, that the remittances which subsequently took place to the Secretary were by the direction of Mrs. Bower, *she claiming the money to be hers*. Does that convey any knowledge to the Secretary? Mrs. Bower was a lady of property, into whose affairs the Secretary had no right to inquire at all. Was it a circumstance to put the Secretary on his guard that she received money from Marsh and that Marsh remits it to Belknap by her direction? She was not then Mrs. Belknap. The remittances to her did not commence to be made to the Secretary when the appointment was made. There was therefore nothing to associate the two things. The appointment of Marsh had been made the year before the first remittance came to the Secretary for Mrs. Bower. Mrs. Bower, according to the testimony, afterward suggested to witness to say to the committee that she claimed the money as hers, and that he had had it in his keeping for her and paid it to Belknap from investments made by him for her. Is it not probable that she gave this reason of the remittances to the Secretary?

Recollect, too, Senators, that you are dealing with a man whose name is spotless, whose escutcheon is without a stain; a man whose probity and justice is recognized in the Army, who was an honor to the Administration of which he formed a part down to the day when this charge was made. Are you going to presume against testimony like this that he had a guilty knowledge of facts, without proof and when his character and the proof all point to a different solution?

Mrs. Bower went abroad. The proof creates the presumption that he received the money for her. That is not all. We have a ray of light shed upon this whole transaction by a witness for the prosecution, for we are not allowed to bring in any here for ourselves. Mr. Emory, of Illinois, had to deal with one of these very checks produced in evidence. He invested it and has charge of the investment now, and holds it for whom? He holds it for Mrs. Bower, now Mrs. Belknap. The facts show that she claimed this to be her property, and that the claim was recognized by the Secretary and that it was transferred to her by him on her return from Europe. Now, Senators, if one piece of this property is thus shown clearly to be claimed by her and recognized by the defendant as her property, does not that show how all the property was claimed and to whom it was all recognized to belong? Consider, too, the present relations of these parties. They are now man and wife, and this disables us from giving you a full explanation and a complete showing of what took place between them and to whom all this money was recognized to belong. We are therefore not able to give you a clear and full account of this transaction and to show where this money went to, and who it was claimed by; but we do show you where a part of it was claimed and where it now rests, and we say that we are entitled to your verdict.

Recollect also, Senators, that Mrs. Bower was an old acquaintance of Marsh. They had lived as neighbors and friends in Cincinnati. They had relations of confidence. Belknap never saw Marsh in his life until he met him with his wife and family as their acquaintance, and he had taken them to his house. This lady comes to have business relations with him as Mrs. Bower. She was not Mrs. Belknap for three years. Why are you to suspect that he knew it simply because he had given Marsh an appointment some time before, and because remittances come to a lady, his sister-in-law, who goes abroad, and to whom he accounts for the money when she returns? Why are you to jump to the conclusion that this respondent takes presents from those upon whom he has conferred office when you have an explanation exonerating him even from this impropriety and when the dishonoring conclusion is not in character with the man at all, his whole official life showing him to be exemplary, just, and exacting?

Consider his actions when complaints were made of the exactions of Evans in the Tribune article by Hazen and by Grierson. Did he act as a man would have done who was conscious of receiving a benefit from these exactions? Not at all. He responded at once by the order made on the 25th of March, 1872. This order was drawn by General McDowell to meet the evil as set before him by General Hazen in the Tribune article. It was approved by General Sheridan as just the thing needed. It was also just what was recommended by General Grierson, and exactly what was required by the Tribune article itself and General Hazen himself. Yet when all these magnates concur in saying that this was the very thing that was wanted to cure the evil, it is insufficient in the eyes of the managers to exonerate the Secretary from conniving at the extortions of the trader, and indeed it is even adduced by them as proof that he aimed to protect the trader in his wrong-doing. This is because they have a foregone conclusion which nothing can unsettle. They have an invincible faith in the wickedness of the Secretary which nothing can shake. Therefore they cannot see, what every other man sees, that these orders drawn by the skillful hand of General McDowell, approved by the experience of General Sheridan, suggested themselves in the Tribune article, called for by General Grierson in his letter, are sufficient.

I say that a man who had been a participant, who was dividing and knowing that he was dividing the spoils with Evans, would not have "killed the goose that laid the golden egg" by such an order as that. Let me call your attention first to Grierson, page 137 of the RECORD. What is the cause of the high prices imposed upon the soldiers? It is because, says Grierson—

> The prices could not be regulated by a council of administration, the trader not being a sutler.

Hence, according to Grierson, the whole difficulty was that the council of administration could not regulate the prices of the trader. The Tribune article on the same page makes the point:

> There is no escape from his rapacity—

Of the trader, says Hazen, speaking in the Tribune article—

> because the officers have no control over him as they had over the sutler.

I need not stop to tell you how the order of March 25 states this, because that order was read here repeatedly. Here are the two articles of complaint brought to the attention of this Secretary by the Tribune article inspired by General Hazen, who himself saw, or thought he saw, what the grievance was and how to remedy it. General Grierson says the same thing, and General McDowell, who bears the matter, took the way to do it; and the only way to do it, all agree, was to subject this trader to the council of administration; and although the Judge-Advocate-General had said that such an order could not be made, the Secretary "took the bull by the horns" and made it, to make sure of remedying and correcting the evil in regard to which these complaints were made.

Look again at this Robinson letter, Robinson who was here, one of the witnesses called for the prosecution. When we brought his letter to the attention of the Senate, then he incontinently "vamosed the ranche." What does the Secretary do with that letter when it comes to him? He puts it in the archives of the Government and calls the attention of the President and of the Judge-Advocate-General and the Adjutant-General of the Army to it. Is that the act of a guilty man? These gentlemen say he abstracted a letter, that he abstracted the Marsh letter. He did not abstract the Robinson letter, not a word of it; but he communicated these charges against himself, thinking they were idle, treating them as ridiculous. And therefore the man who thinks he is afraid of having attention brought to them, and thus argues that they shall be ventilated. No man would so act who was guilty.

After having thus sketched the evidence and called the attention of the Senate to the leading facts in the case, I beg to say in conclusion that I hope the majority of the Senate will not force a vote on the plea which they ordered to be made. This, I repeat, puts the minority of the Senate in an attitude wherein they cannot have a fair vote upon this question of guilt or innocence, because of the decision already had of the want of jurisdiction by more than one-third of this body.

I have discharged my duty to the best of my ability under the circumstances, very trying, owing to the heat of the day and the ex-

haustion of the Senate, the late season of the year in which we have been forced to this argument, the wearied condition of mind in which you all must be, and the staleness of the subject itself, which leaves me to talk to so many empty seats. Can that be called a trial when we have the spectacle of more than half these seats empty? The utter indifference manifested to the subject shows that it is not one upon which this body ought to pass otherwise than by dismissing the articles for the reason that there cannot be any final vote which will represent the just sentiment of the Senate upon the merits of the case.

Mr. MERRIMON. Mr. President, before the counsel takes his sate I wish to propound two questions which I should like to hear debated by counsel, either by himself or some of his colleagues, before the argument closes. I ask the Clerk to read the two questions which I send to the desk.

The PRESIDENT *pro tempore*. The Secretary will report them.

The Chief Clerk read as follows:

If the Senate sits as a court to try cases of impeachment and there is no specified limit on the power of the court to decide all questions coming before it except in one respect, that of conviction, why is a Senator, dissenting from a decision of the court made by a majority, except in the case of the exception named, not bound by such decision just as a dissenting judge of the Supreme Court is bound by a decision made by a majority of that court?

What is meant by the term "convicted" as used in the sixth clause of section 3 of article 1 of the Constitution? Can there be conviction without judgment of disqualification to hold office?

Mr. BLAIR. Mr. President and Senators, the first question which the honorable Senator from North Carolina makes is one which I have endeavored very elaborately to consider in the opening of this argument. I endeavored to show, at some length and by authorities, that the plea which we put in was a plea not in abatement because, as the decision I quoted shows, there can be no plea in abatement in this court. There cannot be, says the decision in 12 Peters, a plea in abatement to the jurisdiction in any court wherein no other court has jurisdiction; that is to say, the plea in abatement must point out the special jurisdiction. That is the form of the plea. It must not only deny the jurisdictio of the body, but it must point out what body has the jurisdiction. Our plea did not do that or attempt to do it; and therefore by the express terms of the decision in 12 Peters it was not a plea in abatement. It was a special plea in bar, and therefore being a special plea in bar, could not be overruled by any less than a vote which could convict, because that means conviction. When a special plea pleads special circumstances as a reason for not convicting, if the plea is overruled conviction follows. Hence conviction cannot follow in this case. The plea has not been overruled in this case because the required number to convict has not been obtained. That is the law as laid down by the highest authority that I know, the Supreme Court of the United States stating expressly the principle that in no court of special jurisdiction is there a plea in abatement made to the jurisdiction by pleading over. Hence also the question inures in the case to the last moment. I suppose no honorable Senator will contend that anybody can give the judgment of conviction except the body that has the power to give judgment. No body can give a judgment of conviction on final hearing of this case except by the assertion of the power of the court. It lies in, it is asserted in, the very judgment itself. The power is inherent, and hence it of necessity requires something that is to assert that power and it does exercise it. That is the answer that I have endeavored to give more at large in the course of my argument.

The second question which the honorable Senator asks is, What is meant by the term "convicted" as used in the sixth clause of section 3 of article one of the Constitution? Can there be conviction without judgment of disqualification to hold office? The disqualification to hold office has not been considered as at all necessary. They may give it or they may not. It has never been maintained, I believe, by any commentator upon the Constitution, that it was necessary on conviction to add to the judgment disqualification as a part of the sentence.

Mr. MERRIMON. Suppose two-thirds of the Senate should find the accused guilty, would it require a two-thirds vote to pronounce judgment? Is the conviction complete without the finding, and also the judgment?

Mr. BLAIR. It is a question that I have not at all considered whether it does not require the same number to give judgment that it does to convict. As a question of first impression, I should say that the judgment, or the sentence rather, necessarily is a part of the evidence of convictions; but most of the treaties on the Constitution with regard to impeachment have considered that the disqualification to hold office was a mere incident; that the object of the proceeding was ejectment from office and the disqualification superadded, which may be put on or not, I think, as circumstances require; that it was merely to insure the effectuation of the judgment. That is, if a man could be convicted and turned out of office and the Senate could not put on a disablement from his being put in again, the President might put him back again, and that contest would be a fruitless one. It was for such cases as that, as I have in my opening argument endeavored to explain, that impeachment applied, that is, only to cases of controversy between the great public bodies, the Executive and his appointees on the one hand, and the House representing the people on the other; and that it would be applicable only to such cases. It could not be carried out in such cases without the power of the Senate to put in the disqualification, because if he were ejected from an office, he might be put back the next day by the President. Therefore I have always supposed it was a thing entirely discretionary according to the aggravation of the offense and according to the judgment of the Senate for the time being as to the offender. But I have not considered whether it required any greater vote to impose the sentence than to adjudge the conviction; but I suppose as a matter of first impression that it would not, that the two things go together. I do not see that it has any particular bearing on the case now before the court. I do not see the bearing of the question upon the case at bar at all. It seems to me, as I have endeavored to explain in this argument and in the other, that the whole reach of this proceeding is against an offender in office, and that the reason of the thing ceases when he is out of office before proceedings commence.

Mr. INGALLS. Mr. President, I move that the Senate sitting in the trial do now adjourn.

The motion was not agreed to.

Mr. BLACK. Mr. President, I do not like to make any appeal to the mere mercy of the Senate; but certainly it seems like a hardship that the case should be pressed on in the absence of the counsel who is to answer the arguments that will be made this afternoon, if they are made. I therefore ask very earnestly that there shall be no objection made—and I am very much surprised that there should be any—to a continuance of the cause until to-morrow simply that Mr. Carpenter, who is absent on account of illness which wholly disables him from being here, shall be present in order that he may, by hearing the arguments of the other side, qualify himself to reply to them. It is impossible for me to do it because the duty of replying mainly to the arguments which the gentlemen will deliver on the part of the House of Representatives this afternoon, if they go on at all, has been assigned to him and not to me. It is almost as bad as refusing to a man the privilege of being heard by his counsel altogether.

Mr. CONKLING. May I inquire of the counsel who is now addressing the Senate, inasmuch as the argument made to-day will be in print by an hour in the morning as early as that when his associate will be up, thus giving him opportunity to peruse and mark it in print, whether the whole object which he seeks will not be obtained substantially as well as if we go over until to-morrow and lose the rest of this day?

Mr. BLACK. I think not. There is no certainty that the argument will be printed to-morrow.

Mr. CONKLING. That occurred to me, and I should like to know from the managers, if we may know that, whether the argument which will be made this afternoon will be in print in the morning. If it should be delivered and withheld for revision, and a reply required from counsel who is not to hear the delivery of the argument, that would be very awkward certainly.

Mr. Manager LORD. I will answer the Senator that Mr. LAPHAM who is expected to make the next argument on behalf of the managers went home indisposed. I have now sent for him. I presume that whatever he says on the subject will not need revision. If Mr. LAPHAM is not able, then Mr. LYNDE will have to go on, if the Senate does not adjourn.

Mr. CONKLING. Will his argument be printed in the morning?

Mr. Manager LYNDE. I should prefer not to go on, as I intended merely to speak on a single point of law, and not comment upon the testimony; and, as an arrangement was made yesterday as to the order of the argument, I did not come here to-day prepared to make my argument.

Mr. Manager LORD. Mr. President, I will say again that I have sent for Mr. LAPHAM. He lives very near by, and he may be able to go on to-day.

Mr. INGALLS. Has Mr. LAPHAM retired from the Capitol, being unable to remain?

Mr. Manager LORD. He went home about an hour ago; but still, I think he may be able to go on. I thought when he went away that Mr. LYNDE would take his place. I find now that Mr. LYNDE would prefer to go on in the morning, and I have sent for Mr. LAPHAM.

Mr. ANTHONY. I should like to ask counsel for the defense if Mr. Carpenter's indisposition is such that it is probable he will be unable to appear to-morrow?

Mr. BLACK. I think he will be here then. He is very sick now, but it is a sort of sickness that he is very likely to recover from by to-morrow morning.

Mr. Manager LORD. You think he will be here?

Mr. BLACK. I do think he will be here.

Mr. CONKLING. I suggest that it might facilitate the determination of this matter if the Senate sitting for the trial were to take a recess of ten minutes. When Mr. LAPHAM gets here these gentlemen can confer.

The PRESIDENT *pro tempore*. The Senator from New York moves a recess of ten minutes.

The motion was agreed to; and (at three o'clock p. m.) the Senate sitting for the trial of the impeachment took a recess for ten minutes.

After the expiration of the recess—

The PRESIDENT *pro tempore*. The Senate resumes the trial session.

Mr. Manager LORD. I will say that I have sent for Mr. LAPHAM, and expect him here every moment. The messenger I sent has not

returned. He lives at 407 East Capitol street, which I understand is not very far from here. If the Senate will wait two or three minutes he will very likely be here.

Mr. CONKLING. By way of preventing the Senate from being without business, I ask that the trial may be suspended and that the bill which I just now reported and in which the Senator from Maine [Mr. HAMLIN] is very much interested may be taken up and acted upon.

The PRESIDENT *pro tempore*. The Senator from New York asks that the trial session be suspended for the purpose of considering legislative business. Is there objection?

Mr. OGLESBY. I understood that the court, or the Senate sitting in the trial, had taken a recess for ten minutes.

The PRESIDENT *pro tempore*. The Senator is correct.

Mr. OGLESBY. And that the President of the Senate had announced that the recess had expired and that the court would proceed with the case. Now, if the managers and counsel are not prepared to go on and the court is ready to hear them, let us conclude the argument and let the court take the case. I do not know that the Senate should be delayed day after day or hour after hour sitting here patiently waiting to hear evidence and hear argument, willing to hear counsel, willing to be enlightened by them, and if after the admonition the counsel and managers have received they are not ready to go on, I think it no more than prudent that the court should admonish the counsel and managers both that it is ready to take charge of the case without any further elucidation.

Mr. CONKLING. Will the Senator allow me to inquire of him, did he hear one of the managers state that a messenger had gone to a house near by to recall one of the managers who left here a short time ago not feeling well, and that they expected him here momentarily?

Mr. OGLESBY. If the Senator from New York will permit me to reply, I will say that I did hear that statement.

Mr. INGALLS. Mr. President, may I rise to a point of order?

The PRESIDENT *pro tempore*. The Senator from Kansas rises to a point of order.

Mr. INGALLS. Is the Senate in trial session or legislative session?

The PRESIDENT *pro tempore*. In legislative session.

Mr. INGALLS. What, then, is the question before the Senate?

The PRESIDENT *pro tempore*. The consideration of the bill asked for by the Senator from New York.

Mr. ALLISON. I have no objection to the consideration of that bill.

Mr. OGLESBY. I asked the presiding officer of this body if the ten minutes had not expired, and before I made a remark I understood the President to say that the court was now ready to proceed with the trial.

The PRESIDENT *pro tempore*. The Senator is right in that the Chair stated that the Senator was correct in regard to the recess. Since the recess, however, by unanimous consent the business of the trial was suspended for the purpose of considering the bill which the Senator from New York reported.

Mr. OGLESBY. To which I rose to object.

The PRESIDENT *pro tempore*. The Chair did not hear the objection. The Senator rose and the Chair recognized him on the bill as he supposed, no objection being made to its consideration.

Mr. OGLESBY. I object now.

The PRESIDENT *pro tempore*. The objection is now too late. The bill will be read.

Mr. EDMUNDS. Mr. President, I rise to a point of senatorial courtesy. If the Senator from Illinois states that he rose to object, according to the universal usage in this body he is entitled to do it.

The PRESIDENT *pro tempore*. The Chair did not understand the Senator to state that he objected before the bill was taken up.

Mr. OGLESBY. I rose and addressed the President of the Senate, if the President will allow me to so remark, by asking the Chair one or two questions. The Chair replied to me in such manner as to leave no doubt upon my mind that we were now in trial session. After that and the motion had been made by the Senator from New York, as I understood from the President that the court was sitting, I did not offer an objection to the Senator's bill, but I took the liberty to make the remarks that I did. The Senate is sitting here patiently in this heated weather ready to go on with this trial. We are perfectly willing to hear counsel and managers, but they ought to be ready without asking a moment's longer delay.

The PRESIDENT *pro tempore*. The Chair will state to the Senator from Illinois that the Chair recognized the Senator from New York, and put the question to the Senate, to which no objection was made, of suspending the business in trial session for the purpose of considering the bill which the Senator from New York suggested. The Chair stated that the bill was before the Senate, and then the Senator from Illinois rose, as the Chair supposed, to address the Senate on the bill. The Senator now states that he supposed the Senate was in trial session, and on that he would have a right to object to the consideration of the bill.

Mr. CONKLING. The honorable Senator from Illinois in the course of his very eloquent remarks has said that he did not object to this bill in which the venerable Senator from Maine was so much interested. The Senator from Illinois need not have made that remark; because, knowing him as I do, I know that he is incapable of making such an objection. He did not object to it; he will not object to it. It is a little bill to change the name of a little fishing-vessel. The papers are all complete; there are full certificates which the Senator from Maine, unlike some other Senators whom I might refer to but I do not, always takes the pains to have, the official certificates and the full proof in these somewhat vexatious cases. He has taken the trouble to have all that now. He wants this little bill passed. It is a matter of accommodation to him and to his constituents. It would have taken about one-quarter the time which I have misexpended myself now in addressing the Senate. As I know the Senator from Illinois will not object to it, I ask now that this little bill may be taken up and passed in the absence of the Senator from Maine, so that, when he comes back, he may be rejoiced to know that the Senate has done that little act of courtesy to him in his absence.

The PRESIDENT *pro tempore*. The Chair reminds the Senator from New York that debate is out of order. The Senate is in trial session.

Mr. OGLESBY. Do I understand the Chair to decide that we are now in trial session?

The PRESIDENT *pro tempore*. In consequence of the objection of the Senator from Illinois; and therefore debate is not in order.

Mr. CONKLING. The Senator from Illinois will withdraw that objection.

Mr. OGLESBY. I should be perfectly willing to accommodate the appeal of the Senator from New York.

The PRESIDENT *pro tempore*. The Chair reminds Senators that debate is not in order.

Mr. OGLESBY. Could I have permission to withdraw my objection?

The PRESIDENT *pro tempore*. The Senator can withdraw his objection.

Mr. OGLESBY. I was going to reply to the honorable Senator from New York that, under his touching appeal, with that rotund and irresistible eloquence that overwhelms every man to whom it is addressed, I would withdraw my objection if I felt that I should be supported by the Senate; but, as I see the Senate is determined to proceed with this trial, I shall have to stand on my objection. [Laughter.]

Mr. Manager LORD. Mr. President, I would state that Mr. LAPHAM is not able to come, and Mr. LYNDE will proceed with his argument.

Mr. Manager LYNDE. Mr. President and Senators, I feel great delicacy in addressing the Senate at this time because of the arrangement which had been made between counsel for the argument of this case, that arrangement being that Mr. Blair should open the argument and should be followed by Mr. LAPHAM who would address the Senate upon the evidence in the case and such points of law as he saw fit to address them on, and that I should be called on to address the Senate on one single point of law; and in fact I did not know that I should be called on to address the Senate on that question of law until yesterday afternoon. Under these circumstances, as I am not to address the Senate upon the facts, (for I have made no compilation of the evidence in this case,) it is peculiarly embarrassing to me, inasmuch as the counsel on the other side have already addressed the Senate upon the facts, and the counsel who is to follow on the other side will undoubtedly ask the Senate that some of the managers shall address the Senate on the facts before he shall be called upon to reply. I do not feel, Senators, that we are at all to blame for not being able to proceed in the regular order of argument this afternoon. It is owing to the fact that one of the managers after spending two or three hours in this court has gone home sick, and that is an event over which neither Senate or managers have any control. It is usually considered a sufficient reason for giving some indulgence to counsel even in the midst of the most important cases, but as a continuation of this argument is insisted upon, I will say to the Senate all that I have to say upon this case and will occupy but a very short time.

The only point to which I intended to call the attention of the Senate is as to the effect of the vote upon the question of jurisdiction upon the final vote which will be taken on conviction. I do not propose to enter into an argument on the question which was argued here by the Senate for some thirty days as to the jurisdiction of this court. I take it that question has been as fully discussed as would be of advantage in this case, and that every Senator is fully satisfied in his own mind; but I am not advised that the other question, which I now present, has received the consideration of the Senate.

The question was asked this afternoon by one of the Senators as to what was included in the word "conviction." When that question is answered it seems to me that it disposes entirely of the effect of this vote. If the word "conviction" embraces every step and every proceeding in the cause from the beginning to the end, every step that becomes necessary in the course of the trial of this cause, then there must be a concurrence of two-thirds of the Senators present. If, however, it includes nothing more than the vote on the question of guilt of the accused, whether the allegations in the articles of impeachment are sustained by the evidence in the case, then all other questions can be determined by a majority vote.

The question of jurisdiction may be raised in different forms. In the case of Judge Barnard it was raised upon a plea that acts which were performed, crimes committed by that judge during a previous term of his service, were not proper subjects of impeachment. What

does that mean but that the court had no jurisdiction of the allegations in those articles of impeachment, and therefore could not proceed with the trial of that cause? On that plea, which was presented to the court, the vote stood 9 against the jurisdiction of the court, against the validity of the articles, and 23 in favor of their validity. Among the eminent lawyers and judges who participated in that trial and who voted upon this question I find that Chief Judge Church, Judges Folger and Rapallo, Senators Foster, Harrower, Lewis, Lord, Murphy, and O'Brien voted against those articles of impeachment, against the court taking jurisdiction of those articles for the reason the offense was committed in a prior term from the one in which he was then serving; and yet those judges after that question had been decided, every one of them, voted in favor of sustaining the articles, those very articles, upon the final vote. What then becomes of this pretense that a Senator sitting as a judge or sitting in the trial of an impeachment case, when he feels that the Senate has no jurisdiction over the articles presented and that question has once been decided by the tribunal, has still a right to set up his own opinion against the decision of the court and refuse to vote upon the articles presented? I see no reason, Senators, why after a question is decided according to law, according to the practice of courts, the decision is not binding upon every party who has any act to perform in carrying out the adjudication of that court.

On the subject of conviction I would ask the indulgence of the Senate to read from Story on the Constitution, § 811:

When the answer is prepared and given in, the next regular proceeding is for the House of Representatives to file a replication to the answer in writing, in substance denying the truth and validity of the defense stated in the answer and averring the truth and sufficiency of the charges and the readiness of the House to prove them at such convenient time and place as shall be appointed for that purpose by the Senate. A time is then assigned for the trial, and the Senate, at that period or before, adjust the preliminaries and other proceedings proper to be had before and at the trial by fixed regulations, which are made known to the House of Representatives and to the party accused. On the day appointed for the trial the House of Representatives appear at the bar of the Senate, either in a body or by the managers selected for that purpose, to proceed with the trial. Process to compel the attendance of witnesses is previously issued at the request of either party by order of the Senate; and at the time and place appointed they are bound to appear and give testimony. On the day of trial, the parties being ready, the managers to conduct the prosecution open it on behalf of the House of Representatives, one or more of them delivering an explanatory speech, either of the whole charges or of one or more of them. The proceedings are then conducted substantially as they are upon common judicial trials, as to the admission or rejection of testimony, the examination and cross-examination of witnesses, the rules of evidence, and the legal doctrines as to crimes and misdemeanors. When the whole evidence has been gone through, and parties on each side have been fully heard, the Senate then proceed to the consideration of the case. If any debates arise they are conducted in secret; if none arise, or after they are ended, a day is assigned for a final public decision, by yeas and nays, upon each separate charge in the articles of impeachment. When the court is assembled for this purpose, the question is propounded to each member of the Senate by name by the President of the Senate, in the following manner, upon each article, the same being first read by the Secretary of the Senate: "Mr. ——, how say you, is the respondent guilty or not guilty of a high crime and misdemeanor, as charged in the —— article of impeachment?" Whereupon the member rises in his place and answers guilty or not guilty as his opinion is. If upon no article two-thirds of the Senate decide that the party is guilty, he is then entitled to an acquittal, and is declared accordingly to be acquitted by the President of the Senate. If he is convicted of all or any of the articles, the Senate then proceed to fix and declare the proper punishment.

It is very apparent that this great commentator on the Constitution construed the word "conviction" as applying to the vote upon the articles of impeachment. That is the only vote which the Constitution requires should be taken by yeas and nays. But it is impossible, Senators, for me to understand how this question as to whether the Senate will try the cause and have a right to try the cause should in any manner be complicated with the question of conviction. It certainly cannot be complicated with it any more than the admission of evidence; the question as to whether evidence is admissible in the trial of the cause where an objection is made; and yet who has ever supposed that it required two-thirds of the Senate to admit testimony which was offered in the trial of an impeachment case? And if the Senate does admit the evidence, if a majority have a right to pass upon the question as to what is legal evidence and what testimony is admissible in the case, that decision must be binding upon the court and every member of it. No member has a right to say that the majority of the Senate can admit the evidence and yet he have a right to exclude it.

In the impeachment case of Andrew Johnson, lately tried before this Senate, in fifteen cases where the yeas and nays were called on the admission of evidence there were less than two-thirds voting for the admission, and yet that evidence was received. Of nine cases where the yeas and nays were called and the evidence was rejected there were five or six where it was rejected by less than a two-thirds vote.

It is a new idea that a judge upon the bench is not bound by legal decisions in the same case; that a judge upon the bench is not bound to regard the law of the case when it is settled; and if it is true that this question can be passed upon by a majority vote, the decision is binding upon the judge as well as upon the party.

I will now read on the subject of the definition of "conviction," from a small work called The Cabinet Lawyer, from pages 62 and 63:

When the case for the prosecution is closed, the prisoner or his counsel addresses the jury and examines witnesses for the defense, to which the prosecuting counsel has the right of addressing the jury in reply, if witnesses have been called for the defense, except for the purpose of proving the prisoner's character; for, if the defense rests entirely on character and cross-examination of prosecutor's witnesses, the prisoner or his counsel has the last word, and no reply is allowed to the opening counsel. The evidence on both sides being closed, the judge sums up, as in civil causes, and the jury deliberate on their verdict, and until a verdict be given they cannot be discharged. If they find the prisoner not guilty, he is liberated; but if they find him guilty, he is said to be convicted of the crime whereof he stands indicted.

I also refer the Senate to Bouvier's Law Dictionary, twelfth edition, title "Conviction," for the legal definition of this word, which reads as follows:

CONVICTION, (Lat. *convictio*; from *con*, with, *vincere*, to bind.) In practice. That legal proceeding of record which ascertains the guilt of the party and upon which the sentence or judgment is founded.

"Which ascertains the guilt of the party." What is it that ascertains the guilt of the party on these articles of impeachment as they are presented to the Senate? Is not that ascertained entirely from the evidence and from the verdict based upon that evidence; the evidence that is properly before the court; the evidence which the court has decided to receive? What has it to do with the fact that the court has voted upon the question as to whether it will proceed to try the cause?

I feel myself embarrassed in presenting authorities to this court to maintain the position that all questions are to be decided by a majority vote, unless the Constitution or laws or the rules of court and of legislative bodies expressly prescribe a different rule. It would seem so familiar to Senators that to quote authorities to sustain it would be trespassing upon your time; yet I ask your indulgence while I call to your minds a few. I do not claim that the vote upon the question of jurisdiction is so far beyond the reach of the Senate that it is not subject to reconsideration at any time during the progress of the trial, and on that vote of reconsideration every member will exercise his own opinion in voting on it; but so long as it remains unrepealed, so long as it remains the standing order of the Senate, it is binding upon all.

The rule of decision in all councils and deliberative assemblies—

I read from Cushing's Law and Practice of Legislative Assemblies, page 167—

whose members are equal in point of right is, that the will of the greater number of those present and voting—the assembly being duly constituted—is the will of the whole body.

The Senate act as a body, and not as individuals, when they pass orders or make laws. The Supreme Court of the United States has decided over and over again that when a decision of that court is rendered even by a divided court it has the same force and effect and is just as binding as if it had received the unanimous vote of that court. I read from the opinion delivered by Mr. Justice Field in the case of Durant *vs.* The Essex Company in 7 Wallace, 113:

The statement which always accompanies a judgment in such case, that it is rendered by a divided court, is only intended to show that there was a division among the judges upon the questions of law or fact involved, not that there was any disagreement as to the judgment to be entered upon such division. It serves to explain the absence of any opinion in the cause, and prevents the decision from becoming an authority for other cases of like character. But the judgment is as conclusive and binding in every respect upon the parties as if rendered upon the concurrence of all the judges upon every question involved in the case.

Therefore I call the attention of the Senate to the fact, that courts and legislative bodies, when they pass upon questions whether of law or any legislative proceeding, act as a body, and when an act has been passed or a decision made by a constitutional vote, it is the vote of the body, and no individual member of the body has a right to complain, no individual member has a right to set up his conscience as against the law. I will now read a few more sentences from Cushing:

Hence whatever is regularly agreed upon by a majority of the members of a legislative assembly is a thing "done and passed" by that body. Where the assembly is equally divided, there is, of course, not a majority in favor of the proposition, which is put to vote, and that proposition is consequently decided in the negative.

413. The right of the majority thus to decide, which is instinctively admitted as an ultimate fact, is also founded in good reason. In the first place, as has already been remarked with reference to electors, the members being supposed equal, it is at least probable, if not certain, that there will be more knowledge, wisdom, and virtue in a majority than in any smaller number; secondly, there is no other practicable way by which, in the last resort, any matter can be concluded, in reference to which there is a diversity of opinion; thirdly, the supremacy of the majority is not the dominion of a certain number of the individual members arrayed together for the purpose of governing the others on all questions and subjects; but those who constitute the majority or minority on any one point may change places on the next question that arises; and, fourthly, as a council or other organized assembly, consisting of several members, is considered as one person or body, as to all other persons and bodies, its will can be no other than that which predominates in it, where there are several discordant wills among the members.

414. For these reasons the law of the majority is universally admitted in all legislative assemblies, unless, in reference to particular cases, persons, or circumstances, a different rule is prescribed by some paramount authority or is agreed upon beforehand and established by the assembly itself, by which a smaller number is permitted, or a larger number is required, to do some particular act. But even in these cases it is the will of the majority that governs, because it is by a major vote, in the first instance, that the rule itself is established; or where the rule is established by the Constitution or by law, it derives its authority from the sovereign power of the people acting in a constitutional manner, which ultimately resolves itself into the will of the majority. The Constitution of the United States requires the agreement of two-thirds of each branch to pass a bill, notwithstanding the objections of the President, and also allows one-fifth of the number necessary to a quorum to require a question to be taken by yeas and nays. There are examples of the establishment by express provision of a rule of decision different from the majority.

Mr. EATON. Mr. President, is it proper that I should ask the manager a question?

The PRESIDENT *pro tempore*. It has been so ruled by the Senate.

Mr. EATON. The manager has read from the manual of Cushing where he says "a majority present and voting." Now the Constitution of the United States says: "And no person shall be convicted without the concurrence of two-thirds of the members present;" not "present and voting," but "present." The question that I desire the distinguished manager to answer is this: Suppose there be sixty members of the court present and but twenty-five vote, is that clause of the Constitution of the United States satisfied by that vote when it says that no person shall be convicted without the concurrence of two-thirds of the members present?

Mr. Manager LYNDE. Mr. President and Senators, I do not know what steps the Senate under those circumstances would feel itself called upon to take. I do not know but a Senator can remain in his seat and refuse to vote upon a question that is legally before the Senate; but this I do think, if it is true that the Senate has no mode of enforcing its rules and requiring every Senator in his seat to vote, it should consider no person present who does not make himself appear upon the record as present by his vote. That is the only test that I know of to ascertain whether a member is present or not. If he should get up and refuse to vote and announce that he is present, I think he is not present within the meaning of the rules and within the construction of the law, for the law supposes that every Senator present will do his duty and vote. The law presumes every Senator votes who is present. I know in legislative bodies with which I have been connected it is frequently said when a question is asked on a motion for reconsideration whether the party who made the motion voted with the majority it is answered that there is no record, the motion is ruled in order. I think that would be the proper rule to govern all cases where you are to ascertain what Senators are present.

I will now refer the Senate to an order in the House of Commons for the purpose of showing how these parliamentary rules have been construed in other bodies. I refer to the Lex Parliamentaria, page 298:

April 2, 1604. A rule that a question being once made and carried in the affirmative or negative cannot be questioned again, but must stand as a judgment of the House; the case of Sir Francis Goodwyn and Sir John Fortescue.

This was a case where the king claimed that Sir Francis Goodwyn was not eligible to a position in the Parliament on the ground that he had been outlawed, and the House of Lords sent down to the House of Commons to ask a conference on this question; but the House of Commons replied that the judgment, where the order had once been made and carried in the affirmative, must stand as the judgment of the house.

I will now ask the attention of the Senate to a reference which I find in 25 Wendell's Reports to Sidney on Appeals and Palmer's Practice of the House of Lords. Sidney on Appeals is the book referred to, and which I cannot find in any of our libraries:

The cases referred to by Sidney on Appeals, and in Palmer's Practice of the House of Lords, which have occured since the deliberate judgment of that tribunal upon the question of rehearing in January, 1697, will all be found to be cases of that description.

That is, upon the question of rehearing.

Both those writers consider it as the settled practice of that court—

That is, the House of Lords.

Mr. CHRISTIANCY. I wish to ask the manager what he now reads from?

Mr. Manager LYNDE. I now read from 25 Wendell, page 255.

Mr. CONKLING. What is the case?

Mr. Manager LYNDE. The case is The People *vs.* The Mayor and Aldermen of New York.

Both those writers consider it as the settled practice of that court, which has existed for nearly a century and a half, that there can be no rehearing or review of the cause upon the merits, after the minutes of the judgment have been settled and directed to be entered. Sydney says, "when the minutes of an order have been read at the table of the House of Lords, it is considered as final and unalterable, even upon appeals from chancery." (Sydney, 32.) And in Bernal *vs.* The Marquis of Donegal, in 1814, where a mistake in drawing up the order upon an appeal was corrected, &c.

I read this for the purpose of showing the binding effects of orders made by this court.

Mr. MITCHELL. If it will not interrupt the manager, I should like to ask him a question. The Clerk will read it.

Mr. Manager LYNDE. Certainly.

The PRESIDENT *pro tempore*. The Clerk will read the question.

The Chief Clerk read as follows:

Suppose the plea in this case had been that of former conviction or former acquittal, would it have required a two-third majority to determine the issue; and if the plea were overruled by a mere majority vote would the Senators voting in the minority be legally bound by such decision?

Mr. MITCHELL. There is one other question which follows in connection with that, which I also ask to have read.

The Chief Clerk read as follows:

What difference is there, if any, between the case just supposed and the case at bar, in reference to the requisite majority to determine the issue?

Mr. Manager LYNDE. Mr. President and Senators, with my view of this case it makes no difference what that plea may be, if the decision of it does not determine the merits of the case. Any plea which may be introduced, which must be disposed of preliminary to the vote on conviction, or vote on the guilt of the party, can be decided by a majority vote of this body, and when so decided it is conclusive upon the Senate and upon the body.

Mr. CONKLING. Mr. President, if I do not incommode the manager I should like to ask him a question to understand what he has said.

Mr. Manager LYNDE. Not at all.

Mr. CONKLING. I have understood the manager to argue and to hold that the presence on this record of an order, sustained by a majority of the Senate, overruling the plea, constitutes the rule of action for every Senator; and that while that order stands he is bound by his vote to assert jurisdiction in this case.

Mr. Manager LYNDE. So I understand.

Mr. CONKLING. I beg to ask the manager a question. Take the case of a Senator who believes that the remedy by impeachment is confined to civil officers, that it touches nobody else, that Senator, under the manager's proposition, would be compelled, as long as that order stands, to assert by his vote the contrary of his belief. But suppose, when this case comes to be ultimately disposed of some Senator should say, "Now, let us waive technicalities and let us by general consent deem the order vacated; by unanimous consent, let it be dropped and expunged," then I understand it would follow that every Senator would be remitted again to the duty of voting on his oath as he believes the Constitution to be, merely because by general consent the order meanwhile would have disappeared. Is that the position of the manager?

Mr. Manager LYNDE. My position is just this: that every Senator and every judge is bound by the law and the Constitution as it is construed and interpreted by the proper authorities; and that if a majority of the Senate have a right to pass upon the question and settle the question of jurisdiction, then that question is settled according to the Constitution, and is binding upon the member, under his oath that he will support the Constitution, and he is not at liberty to set up his individual views as against the legal construction.

Mr. CONKLING. That being the general principle, I want, if I can, to make the application exactly right in my own case. Therefore I beg the manager to say in answer to my proposition, whether the rule and its application for which he contends means this: that, inasmuch as the order stands on the record overruling the plea, every Senator is bound for that reason to so vote as to assert the jurisdiction of the Senate, whereas the same Senators who disbelieved in the jurisdiction, if by the order or consent of the Senate that order overruling the plea should be dropped or expunged, would then instantly be obliged to vote the reverse; that is to say, to vote in accordance with their own convictions. Is that the application which the manager gives?

Mr. Manager LYNDE. He must vote as the law stands when his vote is given.

Mr. CONKLING. By "the law" the manager there means the order which has been registered by the court?

Mr. Manager LYNDE. The order which has been registered by the court so far as that order extends. I would not trace it beyond the plea, because that is all the order applies to. I mean by that, that the Senate are only bound so far as the order extends; the Senate has overruled the plea to the jurisdiction and ordered an answer to the merits, and the issue to be tried is an issue upon the merits.

Mr. CONKLING. Now expunge the order, and then what would be the duty of Senators?

Mr. Manager LYNDE. If there is no plea to the jurisdiction in this case——

Mr. CONKLING. I beg pardon; take the plea just as is. Expunge the order overruling that plea; let it be done by unanimous consent. It is obliterated. What I ask the manager then, in his view of the law, is the duty of a Senator like myself, who disbelieves utterly in the notion that the remedy of impeachment touches anybody but a civil officer? What is his duty then?

Mr. Manager LYNDE. My answer to that would be that the plea standing to the jurisdiction of the court, if the Senator believed that the court had no jurisdiction he would then vote for the dismissal of the impeachment, and if the vote upon the guilt of the accused should be first taken and the Senate should convict, then the question would properly arise on a motion in arrest of judgment, and would come properly before the Senate.

Mr. CONKLING. Now the manager comes to the only remaining inquiry which I wish to put, and it was part of my original inquiry. Suppose in place of a special direction of the Senate, by which the jurisdictional question was presented as a preliminary question, the trial had proceeded until now, that remaining then as it is now one of the elements in the case, would it or would it not, in the judgment of the manager and upon the law as he understands it, be the duty of any Senator to vote to maintain a jurisdiction which on his oath he believes does not and cannot exist?

Mr. Manager LYNDE. The question should be raised by the parties before the final hearing of the case. If not raised, it is true the court or any Senator would have a right to raise the question and have it disposed of; but I think it should be disposed of as a separate question by the Senate in any event.

Mr. CONKLING. But if it came simply on the general vote in the end, what would the law be, as the manager understands it?

Mr. Manager LYNDE. I must answer the Senator that I never heard of such a case. I never knew of a case of that kind, where the question was not raised before the final hearing, or subsequently by a motion in arrest of judgment; and in those cases a majority settle the question; it becomes the order of the court.

Mr. CONKLING. Is it, then, the opinion of the manager, and the law as he ascertains it to be upon investigation, that if the question were now first presented on a plea of not guilty, and the presiding officer propounded to me the question: "How say you, Mr. Senator, is the respondent guilty or not guilty?" and I made answer that he is guilty without in that verdict or vote including the element of jurisdiction, that I could so answer if I believed that I had no more right to pronounce upon him than the Senate to pronounce upon the honorable manager now upon the floor? Is that the view of the manager?

Mr. Manager LYNDE. Mr. President and Senators, in response to the questions propounded by the Senator from New York, I will answer that if he votes at all, if he entertains jurisdiction by participating in the trial of the cause, if he feels that he has a right to try the case, and thereby entertains jurisdiction, then he is bound to vote as to the guilt of the party upon the articles presented; that he cannot try the cause and at the same time insist that he has no right to try the cause, and thereby avoid a vote upon the issue joined upon the guilt of the accused. If I may be pardoned, I would ask of the Senator, or any other Senator on this floor if they have ever known a judge to refuse to participate in the trial of a cause where the other judges sitting with him upon the bench had overruled him upon a preliminary question; and that is all there is of this matter. The very first question in the case naturally to decide is as to whether the Senate can try this case. It is purely preliminary, entirely independent of the merits, involving no question of guilt, but barely whether the Senate has a right under the Constitution to try the cause. When that preliminary question is disposed of, which according to the decisions of the courts and according to the rules laid down in Cushing which I have read to the Senate is a question to be determined by the majority, it is conclusive and binding in that case until reconsidered.

Mr. McMILLAN. Will the manager allow me to ask him whether I understand him correctly to say that the question of jurisdiction in a trial of this kind is a preliminary question?

Mr. Manager LYNDE. Yes, sir.

Mr. McMILLAN. One that cannot be raised at any other stage of the case?

Mr. Manager LYNDE. No; the Senator did not understand me in that way. It can be raised at any time, even after conviction.

Mr. McMILLAN. Then must it not be passed upon at the time it is raised?

Mr. Manager LYNDE. Certainly; but it must be passed upon as an independent question which a majority can determine. Parties sometimes may waive the question of jurisdiction; but as a general rule the question of jurisdiction can be raised at any time during the progress of the cause.

So rigid have the courts been in the construction of the rule that a majority shall govern, that when in the State of New Jersey a law was passed providing that no judgment of the supreme court shall be reversed by the court of appeals unless a majority of all the members elected shall concur in such reversal, the highest court in the State declared the law unconstitutional. (Clapp *vs.* Ely, 3 Dutcher's Reports, 622; F. F. Frelinghuysen and C. Parker for plaintiffs in error, Runyon and Bradley for defendants.) The syllabus reads:

A law which provides that no judgment of the supreme court shall be reversed by this court, unless a majority of those members of the court who are competent to sit on the hearing and decision of the case shall concur in such reversal, is unconstitutional.

But even if such law were constitutional, if a majority of the judges who are competent to sit in the cause, when it is decided, concur in reversal, the judgment should be reversed.

Mr. President and Senators, I have presented my views on this subject as fully as I care to present them. I have not presented to the Senate all of the authorities that I intended to refer to, but being forced to argue this question this afternoon, I have not been able to arrange the authorities so that I could refer to them readily. Therefore will not trespass further upon the time of the Senate.

Mr. SHERMAN. I move that the court adjourn.

The motion was agreed to; and the Senate sitting for the trial of the impeachment adjourned.

FRIDAY, *July* 21, 1876.

The PRESIDENT *pro tempore*. Legislative and executive business will be suspended, and the Senate will proceed to the consideration of the articles of impeachment exhibited against William W. Belknap, late Secretary of War, by the House of Representatives.

The usual proclamation was made by the Sergeant-at-Arms.

The PRESIDENT *pro tempore*. The House of Representatives will be duly notified.

Messrs. LORD, LYNDE, and McMAHON, of the managers on the part of the House of Representatives, appeared and were conducted to the seats assigned them.

The respondent appeared with his counsel, Mr. Black.

The Secretary proceeded to read the journal of the proceedings of the Senate sitting yesterday for the trial of the impeachment of William W. Belknap.

Mr. SHERMAN. I move that the reading of the journal be dispensed with.

Mr. CONKLING. I think the reading of the journal had better continue until the counsel or the managers who are to address the Senate come in. The manager, Mr. LAPHAM, who is to address the Senate is not here. If objection is made to doing anything except proceeding with this trial, I think we may as well read the journal until the manager comes in who is to address the Senate.

The PRESIDENT *pro tempore*. The Secretary will resume the reading.

The Secretary concluded the reading of the journal.

The PRESIDENT *pro tempore*. The Senate is ready to proceed with the trial.

Mr. BLACK. Mr. President, it is my duty to myself, to my colleague, to my client, to the court to encounter any misapprehension that may be necessary, but at all events to lay before the Senate an affidavit from the physician of Mr. Carpenter showing what his condition is. If he is so sick as to make it absolutely impossible for him to come in now, then we are asking you for a postponement, an intermission in this argument upon grounds which I think have never been refused. To say that the counsel whose business and duty it is to make the concluding argument shall not have the indulgence that is asked for in this case in order that he may be here while the argument is proceeding upon the other side, is a kind of, I would say harshness, but I am sure it is not meant in that way. The Senate are tired, as we are, and everybody desires to get through with this business as soon as possible; but it certainly is asking no more than would be granted in any case, no matter whether great or small, pending before any tribunal. I ask that this cause be postponed until the time mentioned in this affidavit as being the time when Mr. Carpenter will be able to be present, to wit, next Monday.

The PRESIDENT *pro tempore*. The Secretary will read the paper for information.

United States Senate sitting as a court of impeachment.

THE UNITED STATES }
vs.
WILLIAM W. BELKNAP. }

DISTRICT OF COLUMBIA, *County of Washington, ss.:*

Personally appeared before me D. W. Bliss, who, being sworn according to law, says that he has been the family physician of Matt. H. Carpenter for seven years when in Washington; that he is now under my care and seriously ill with acute gastritis, (inflammation of the stomach;) that he has been confined to his bed for the past thirty-six hours, and is not able to leave his room to-day; and I state my belief that he will be able to resume his duties on Monday, the 24th instant.

D. W. BLISS, M. D.

Subscribed and sworn before me this 21st day of July, A. D. 1876.

A. E. BOONE.
[SEAL.] *Notary Public.*

The PRESIDENT *pro tempore*. Have counsel any motion to make?

Mr. BLACK. I have moved the court for a postponement until Monday morning next.

The PRESIDENT *pro tempore*. The counsel on behalf of the accused moves that the trial be postponed until Monday next. The question is on that motion.

Mr. Manager LORD. Perhaps it is due to the case to say that Mr. LAPHAM, who is elaborately prepared on the questions of fact, the manager relied upon to bring before the Senate the questions of fact, while he hopes to be able to be here to-day, is really not able to be here. I recently left him, not half an hour ago. He thought he would get out of his bed to come over and make his argument in regard to which he is thoroughly prepared. Under these circumstances, the managers do not feel like opposing the application made upon the other side. I think if the time of the Senate can be taken up in legislative business, no time will really be lost by allowing Mr. LAPHAM to come in Monday morning and make his argument.

I will further say that the arrangement originally was that the managers and counsel should alternate; but inasmuch as the managers have not yet opened on the questions of fact (for Judge LYNDE, it will be remembered, confined himself wholly to a question of law) perhaps under the circumstances it would be just that Mr. LAPHAM should have until Monday morning to recuperate, when he will take only two hours and perhaps less, and then the case will be ready for the other side.

The PRESIDENT *pro tempore*. Is the Senate ready for the question on the motion of the counsel that the trial be postponed until Monday next?

A division was called for.

Mr. HOWE. I ask for the yeas and nays.

The yeas and nays were ordered; and being taken, resulted—yeas 34, nays 5; as follows:

YEAS—Messrs. Allison, Anthony, Barnum, Bayard, Bogy, Booth, Boutwell, Conkling, Cooper, Cragin, Davis, Dawes, Dennis, Edmunds, Ferry, Frelinghuysen, Hamilton, Howe, Ingalls, Kelly, Kernan, Key, McDonald, Mitchell, Morrill, Norwood, Patterson, Randolph, Ransom, Sherman, Spencer, Wallace, West, and Wright—34.

NAYS—Messrs. Cockrell, Hitchcock, Oglesby, Paddock, and Withers—5.

NOT VOTING—Messrs. Alcorn, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Caperton, Christiancy, Clayton, Conover, Dorsey, Eaton, Goldthwaite, Gordon, Hamlin, Harvey, Johnston, Jones of Florida, Jones of Nevada, Logan, McCreery, McMillan, Maxey, Merrimon, Morton, Robertson, Sargent, Saulsbury, Sharon, Stevenson, Thurman, Wadleigh, Whyte, and Windom—33.

So the motion was agreed to; and the Senate sitting for the trial of the impeachment adjourned until Monday next.

MONDAY, *July* 24, 1876.

The PRESIDENT *pro tempore*. The Senator from Vermont insists on the regular order. Legislative and executive business will now be suspended and the Senate will proceed to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

The PRESIDENT *pro tempore*. The usual notice will be transmitted to the House of Representatives.

Mr. LORD, one of the managers on the part of the House of Representatives, appeared.

The respondent appeared with his counsel, Messrs. Black, Blair, and Carpenter.

The Secretary read the journal of proceedings of the Senate sitting on Friday for the trial of the impeachment.

The PRESIDENT *pro tempore*. The Senate is ready to proceed with the trial.

Mr. Manager LORD. Mr. President, I desire before submitting any remarks to the Senate to have this affidavit which I send to the desk read by the Clerk.

The PRESIDENT *pro tempore*. The affidavit will be read.

The Chief Clerk read as follows:

United States Senate sitting as a court of impeachment.

THE UNITED STATES }
vs.
WILLIAM W. BELKNAP. }

DISTRICT OF COLUMBIA, *County of Washington, ss.:*

Personally appeared before me D. W. Bliss, M. D., a practicing physician, who being sworn according to law said, that Hon. A. G. LAPHAM has been under his professional care during the past three days and unable to leave his bed by reason of acute cellulitis and perineal abscess, and he will not, in my opinion, be able to resume his official duties before Wednesday, the 26th instant.

D. W. BLISS, M. D.

Sworn and subscribed to before me this 24th day of July, 1876.

A. E. BOONE,
Notary Public.

Mr. Manager LORD. I desire very briefly to state to the Senate the situation of this, case and then to leave it with the Senators. The managers have not yet opened on the facts. The other side, I think with entire propriety, insist that, before they come to reply on the facts, under the rules adopted by the Senate the managers should open on the facts. Mr. LAPHAM has been relied upon for that purpose and is sick, as described in this affidavit. I have just been to see him. He would have attempted to come this morning but for the positive prohibition of his physician; and he is very confident that he can be here Wednesday morning. Probably the Senate can occupy its time with legislative business; but of course the managers cannot judge of this. I say this in the absence of the other managers. I take the responsibility of saying that it would be agreeable to the managers to have the case postponed until Mr. LAPHAM can be heard.

The PRESIDENT *pro tempore*. Does the manager submit any motion?

Mr. Manager LORD. Under the circumstances reluctantly, as we never have procured an adjournment, I submit a motion that the case be postponed until Wednesday morning.

Mr. ANTHONY. Mr. President, I should like to ask a question of the managers; that is, if they will be ready to go on Wednesday in case Mr. LAPHAM does not recover?

Mr. Manager LORD. Yes, sir; and I will say more, (in answer to a suggestion made by a Senator,) that we could go on this morning, but under all the circumstances I think something is due to Mr. LAPHAM. This, if I recollect aright, is the first time that the managers have suggested a postponement at all; and were it not that I have just seen Mr. LAPHAM and know his strong desire to be heard in the submission of this case, and were it not that I am also aware that he is thoroughly prepared, I would not make this suggestion or motion; but as it is, when I made the motion I had to do it in the absence of the other managers, as no one was then here but myself.

Mr. Manager LYNDE, Mr. Manager MCMAHON, and Mr. Manager JENKS appeared.

Mr. FRELINGHUYSEN. I do not know whether I understand the managers or not as saying that they could go on this morning.

Mr. Manager LORD. Yes, sir. It is fair to the case to say, it is due to the managers to say, that the managers have not left this an open question. We are prepared to go on this morning in case the Senate concludes not to wait for Mr. LAPHAM. I have given the reasons why we desire to wait for Mr. LAPHAM. I cannot say more than I have said; but if the Senate conclude that it ought not to adjourn the trial, the managers are prepared to go on.

The PRESIDENT *pro tempore*. The managers submit a motion that the trial be postponed until Wednesday next.

The motion was not agreed to.

Mr. Manager LORD. Mr. President, I would ask, under the circumstances, leave that Mr. LAPHAM be allowed to print his argument.

The PRESIDENT *pro tempore*. Is there objection?

Mr. CARPENTER. There is objection, Mr. President.

The PRESIDENT *pro tempore*. The Chair will submit the question.

Mr. CARPENTER. We are willing to wait until Mr. LAPHAM can come; but when he comes and makes his argument we want to reply to it.

The PRESIDENT *pro tempore*. The Chair will submit the question to the Senate.

Mr. SARGENT. Allow me to ask a question of the Chair. I should like to inquire when this argument of Mr. LAPHAM will be printed, if its printing is allowed? In time to be read by counsel who is to reply, or in time to be read by the Senate before the decision?

Mr. Manager LORD. I think it can be printed to-morrow morning.

The PRESIDENT *pro tempore*. The manager asks that Mr. LAPHAM, one of the managers, be permitted to print his argument.

Mr. INGALLS. With the understanding that it is to appear to-morrow morning?

The PRESIDENT *pro tempore*. The Chair is not advised as to that.

Mr. CARPENTER. And also with the further understanding that we shall not be required to close the case on the part of the defense until to-morrow. It is manifestly unjust, Mr. President, to allow the argument which has been prepared on the part of the managers on the facts to come in here after our case is closed. No court would tolerate that.

Mr. Manager LORD. The managers propose this morning to submit an argument on the facts, perhaps as exhaustive as that of Mr. LAPHAM, and I presume very much in the line Mr. LAPHAM would take. I have no doubt that Mr. LAPHAM'S argument can be printed by to-morrow morning. The facts relied upon by the managers, however, will be presented to-day.

The PRESIDENT *pro tempore*. The question is, Will the Senate allow the argument of Mr. Manager LAPHAM to be printed? The counsel, Mr. CARPENTER, has asked that the defense shall not be required to reply until to-morrow after the print appears.

Mr. Manager LORD. I suppose that is an independent motion.

The PRESIDENT *pro tempore*. The Chair has submitted the suggestion of the counsel. He will now put the question, Shall this argument be printed?

The motion was agreed to.

The argument of Mr. Manager LAPHAM is as follows:

Mr. Manager LAPHAM. Mr. President and Senators, I approach the discharge of the important duty which now devolves upon me with an unfeigned diffidence in my ability to render to the case that service which its great importance demands. It shall be my purpose as directly as possible to enter upon the discussion of the questions which the case presents, and as briefly as a sense of duty will permit to submit my views for your consideration; and I hope to be able to do so without trespassing upon your patience or unnecessarily consuming the time of the Senate.

The position occupied by the respondent down to the 2d of March last, the nature of the charges preferred against him by the House of Representatives, in whose name and behalf we are acting, undoubtedly require that he should be entitled in the outset to that presumption of innocence which usually obtains in trials for crime, and that such presumption should only be overcome by that clear and satisfactory evidence of guilt which leaves no fair ground for a reasonable doubt on the subject.

For aught we know and as the defendant has shown, down to the time he was selected for the high office in question he was a citizen of good repute, of unblemished character, and high standing as a brave military officer. He had rendered such service and maintained such a rank as soldier and citizen that on the mere imputation of offense he could have said:

> I never robb'd the soldiers of their pay,
> Nor ever had one penny bribe from France.
> So help me God, as I have watch'd the night—
> Ay, night by night—in studying good for England,
> That doit that e'er I wrested from the king,
> Or any groat I hoarded to my use,
> Be brought against me at my trial day!
> No! many a pound of mine own proper store,
> Because I would not tax the needy commons,
> Have I disbursed to the garrisons,
> And never ask'd for restitution.

Enjoying to such an extent the esteem of his countrymen, in the language of his commission, the President, "reposing special trust and confidence in his patriotism, integrity, and ability," selected him as one of his Cabinet counselors to fill the high and responsible office of Secretary of War.

If, as these articles charge, he has abused that confidence, betrayed his trust, and fallen from the high position almost at the first presentation of temptation, the conclusion that he is thus guilty deters all just minds from cultivating any sympathy in his behalf, however much we commiserate the position in which he is placed by his own voluntary acts. On the contrary, his case demands the most stern and fearless execution of all the punishments provided by the Constitution and laws in such cases.

The articles of impeachment charge—

First. That the defendant, being Secretary of War, promised to appoint Marsh as post-trader at Fort Sill; that thereafter, and on the 8th day of October, 1870, Marsh and Evans made the agreement which has been put in evidence; that on the 10th of October, 1870, the defendant, at the request of Marsh, appointed Evans post-trader; and that on the 2d November, 1870, and at the end of each three months

thereafter for one year, the defendant corruptly received from Marsh the sum of $1,500 in consideration of the appointment of Evans and of retaining him in his place.

Second. That on the 4th of November, 1873, the defendant corruptly took and received from Marsh the sum of $1,500, in consideration of which he corruptly agreed to retain said Evans at said military post.

Third. That the defendant, being Secretary of War, and having authority to appoint a post-trader at Fort Sill, did, at the request of Marsh, on the 10th October, 1870, appoint Evans, who continued to hold the office to March, 1876; that before the appointment Evans and Marsh made the said agreement, and in pursuance of the same Evans paid Marsh quarterly for the first year the sum of $12,000 and large sums after that until December, 1875; that on the receipt of each sum by said Marsh, he, said Marsh, paid one-half to the defendant; that the defendant, well knowing these facts and having the power to remove Evans, disregarded his duty and permitted him to remain the post-trader at Fort Sill.

Fourth. That the defendant, on the 10th of October, 1870, did appoint said Evans post-trader at Fort Sill, and for such appointment and for continuing him in office did receive from Marsh large sums of money; and in this article are seventeen specifications setting forth the dates and amounts of each payment.

Fifth. That on the 10th October, 1870, the defendant appointed Evans as post-trader at Fort Sill and permitted him to retain the place until March, 1876; that the defendant was induced to make the appointment at the request of Marsh, in consideration of which Evans paid Marsh $12,000 a year until the 25th March, 1872, and $6,000 a year thereafter, yet the defendant, in consideration he would permit Evans to retain said post, did receive from Marsh for his own use, or to be paid over to his wife, the several sums of money stated in the specifications of the fourth article.

To these articles the defendant has put in no answer or denial, but stands mute, and the trial by an act of mercy to him has proceeded as upon a plea of not guilty.

If he really had a valid and tangible defense, one would have supposed he would have gladly availed himself of the opportunity to spread it upon the record and to have called some one or more of the one hundred and ninety-seven witnesses we were notified he should call to prove such defense and to establish his innocence.

Indeed, the learned counsel for the defendant [Judge Black] in substance, in one of his earlier speeches during the progress of the trial, characterized the defense upon which General Belknap relied and which he believed to be complete as being so inexpressibly painful to him that the House had better have taken his life than put him on trial for this accusation. The defense has not been presented for the consideration of the Senate; none of the one hundred and ninety-seven witnesses have been called to establish the said defense under the assumed plea of not guilty.

But he has been content to call witnesses to prove that down to this charge he sustained a good character, and without attempting to deny or disprove the payment of these large sums of money, amounting in the aggregate to over $21,000. His previous good character will be of little avail if these payments and the purpose for which they were made are established by the evidence in the case, as we shall claim they are beyond all question. It is only in doubtful cases, or those depending mainly upon circumstantial evidence, that proof of good character is of importance to a person accused of crime.

It is not necessary in this case in order to convict the defendant that he shall be shown to have committed an offense punishable by law as a statutory offense. This was fully settled in the case of President Johnson, and the Barnard case in New York, and is the recognized doctrine of most of the elementary writers.

The defendant may be convicted, we submit, under the fifth article for receiving for his wife and family those various sums of money and keeping Evans in his place in consideration thereof, as well as for receiving it for a like purpose for his own use.

Admitting, as the evidence tends to show, that the first remittance was for his second wife and the second and third for his child, yet the subsequent payments were, as sworn to by Marsh, for the defendant's own use, and the defendant's present wife was in no event to have any interest in the money.

Before proceeding to a consideration of the detail of the evidence, it may be well to notice one or two of the theories which were at one time put forth by the defendant and those acting in his behalf.

According to the evidence of Marsh as read to the defendant by Mr. CLYMER, and according to the history of the case, it was proposed to set up that the money sent the defendant by Marsh was the income of a fund in Marsh's hands belonging to the defendant's second wife. The fatal difficulty with that theory was that after the Tribune article the income was diminished by one-half, and no investigation or inquiry was ever made why it was so reduced. Had her property been lost or her income been depreciated, or what was the cause of so sudden and great falling off of income? The defendant never asked the question, but was as content with $3,000 per year paid half yearly as he had before been with $6,000 per year payable quarterly. So that theory has been abandoned.

Another theory was, and that is the one upon which the case now rests, that Mrs. Belknap and the defendant were placed under great obligations to Marsh for his kindness to Mrs. Belknap in her illness, and that the defendant and his wife wanted to do something for Marsh in consideration thereof. It is a little difficult to see how appointing Evans instead of Marsh would accomplish that end, or how it should result in quarterly presents of $1,500 by Marsh to Mrs. Belknap instead of something by way of compensation by Mrs. Belknap to Marsh. The guise by which the real transaction in this case is thus sought to be covered up is entirely too thin to conceal the real truth, and will not deceive or mislead any Senator who carefully scans the evidence in the case.

We are brought, then, to a consideration of the evidence with a view of ascertaining what are the facts proven to establish the guilt of the defendant.

Senators will bear in mind it is only a question of fact which remains to be decided. The question of law as it affects the jurisdiction of the court has been decided, the judgment of the court has been entered thereon and the court has ordered the trial of this question of fact as upon a plea of not guilty. In the Barnard case in New York three judges of the court of appeals and seven senators voted against jurisdiction on all the articles charging Judge Barnard with offenses committed during a term of office which had expired before he was impeached. Yet the same judges and senators voted him guilty on the articles thus objected to for want of jurisdiction, on several of which the vote was unanimous that the respondent was guilty. After the question of jurisdiction was settled there it became a question of fact, as it is here, does the proof establish the guilt of the respondent?

That the relations between the defendant and Marsh were more than usually intimate for some cause, is very fully established by the proof; and yet they were strangers until after the passage of the act of July, 1870, giving the appointment of post-traders to the Secretary of War. The section conferring that power was put in the Army appropriation bill on the recommendation of the Secretary of War, as stated in the Tribune article and as proved by Mr. Crosby and not denied by the defendant. This change, which took from the post council of administration the power to control the sutler in his prices, and superseded the act of 1866 which provided that the soldiers should have their supplies at cost, gave to a post-trader, when appointed, the sole occupant at a military post, a complete monopoly of prices without any check or restraint whatever.

It appears by the evidence that the first application of Evans to be appointed post-trader at Fort Sill was made as early as the 23d of June, 1870, nearly a month before the act empowering the Secretary to make the appointment became a law. It is signed by all the officers at that post, indorsed by General Grierson, and is, I venture to say, the strongest recommendation ever made to the respondent for such an appointment. By this it is evident that in military circles it was known or believed the respondent was to be clothed with this power. This recommendation was accompanied by a letter from General Grierson and an application from Evans, found on page 133 of the record. There was also a second recommendation forwarded by Evans, which is signed by the same officers as the one of the 23d of June, is without date, but was filed in the office of the Adjutant-General on the 25th of July, 1870. On the 18th of August, 1870, Evans wrote the defendant from Philadelphia, calling his attention to the recommendations he had sent and to the fact that he and Mr. Durfee had large interests at stake and would suffer irreparable loss unless retained as traders at Fort Sill.

There was no other application for the post at Fort Sill except the one made by Marsh, which bears date August 16, 1870, two days before the letter of Evans. Was this letter written at that date, or being written afterward, and after Marsh had made the acquaintance of the Secretary of War, was it antedated so as to precede the date of the letter of Evans? Bear in mind, Senators, the applications of Evans, so well supported, as I have shown, were on file from and after the 25th of July, 1870.

Now what is the evidence as to the time when the defendant first saw Marsh? According to the recollection of Marsh the first he ever saw respondent was at his house in September, 1870. The defendant undertook to show by Marsh that he first saw him at Long Branch in September, 1870, but Marsh does not remember that; and what Marsh says upon seeing the letter dated August 16, 1870, is reasoning, and not recollection. These two applications by Evans and Marsh were filed the same day, September 23, 1870, and it is very evident from Marsh's testimony that he had not made the acquaintance of the defendant until that month.

The application of Marsh bearing date the 16th of August, 1870, has upon it two indorsements in the handwriting of the defendant, as follows: "Received August 16, 1870." The proof establishes, by the records of the War Office, that the defendant was absent from Washington from the 12th of August to about the middle of September. He could not have received it, therefore, on the 16th unless addressed to him at some other place, which is not to be presumed and is not shown. The double indorsement of its receipt by the defendant is, at least, a suspicious circumstance in the case.

There was nothing in support of the application of Marsh. The indorsement of Congressman Stevenson bears date the 2d of November, 1870, which was after the appointment of Evans was made. When it was received at the War Department does not appear. The evidence of Evans shows that he called on the Secretary of War early in October with reference to his application. The Secretary told him

he had promised the appointment to Marsh, who would be in the city that or the next evening, and he had better see him and they could probably make some satisfactory arrangement.

Marsh says he was called to Washington by a telegram from the respondent or Mrs. B.; that he came here and called on the Secretary, and was informed by him that Evans was in the city and he had better see him. The Secretary also said that Evans had a large stock on hand at Fort Sill, and he (Marsh) ought to make some arrangement to save him from loss. The defendant told him where Evans would be found. (See page 164 of the record.) At this suggestion Marsh called on Evans, and they made the arrangement preliminary to the agreement of the 8th October, 1870. The sum of $20,000 was first exacted by Marsh; finally $15,000 was fixed, and the parties were to go to New York the next day and have the writings drawn. On the way to New York, the next day, Evans stated to Marsh he had seen a statement in the papers that a portion of the troops stationed at Fort Sill were to be removed; that $15,000 was more than he could pay, and the sum of $12,000 was finally agreed upon to be paid quarterly in advance. Why paid in advance? Clearly from the terms of the agreement to secure the certain payment of the bonus and to enable Evans to hold the place. It was not to be a division of profits, but the payment in advance of a fixed sum whether Evans made profits or not. If he had not made a dollar or a dime, he was bound to pay this large bonus or surrender his post. I desire Senators to read at this time and in this connection the agreement as finally executed on the 8th October in the city of New York. It is as follows:

Articles of agreement made and entered into this 8th day of October, A. D. 1870, by and between John S. Evans, of Fort Sill, Indian Territory, United States of America, of the first part, and Caleb P. Marsh, of No. 51 West Thirty-fifth street, of the city, county, and State of New York, of the second part, witnesseth, namely:

Whereas the said Caleb P. Marsh has received from General William W. Belknap, Secretary of War of the United States, the appointment of post-trader at Fort Sill aforesaid; and whereas the name of said John S. Evans is to be filled into the commission of appointment of said post-trader at Fort Sill aforesaid, by permission and at the instance and request of said Caleb P. Marsh, and for the purpose of carrying out the terms of this agreement; and whereas said John S. Evans is to hold said position of post-trader as aforesaid solely as the appointee of said Caleb P. Marsh, and for the purposes hereinafter stated:

Now, therefore, said John S. Evans, in consideration of said appointment and the sum of $1 to him in hand paid by said Caleb P. Marsh, the receipt of which is hereby acknowledged, hereby covenants and agrees to pay to said Caleb P. Marsh the sum of $12,000 annually, payable quarterly in advance, in the city of New York aforesaid; said sum to be so payable during the first year of this agreement absolutely and under all circumstances, anything hereinafter contained to the contrary notwithstanding; and thereafter said sum shall be so payable, unless increased or reduced in amount in accordance with the subsequent provisions of this agreement.

In consideration of the premises, it is mutually agreed between the parties aforesaid as follows, namely:

First. This agreement is made on the basis of seven cavalry companies of the United States Army, which are now stationed at Fort Sill aforesaid.

Second. If at the end of the first year of this agreement the forces of the United States Army stationed at Fort Sill aforesaid shall be increased or diminished not to exceed one hundred men, then this agreement shall remain in full force and unchanged for the next year. If, however, the said forces shall be increased or diminished beyond the number of one hundred men, then the amount to be paid under this agreement by said John S. Evans to said Caleb P. Marsh shall be increased or reduced in accordance therewith and in proper proportion thereto. The above rule laid down for the continuation of this agreement at the close of the first year thereof shall be applied at the close of each succeeding year so long as this agreement shall remain in force and effect.

Third. This agreement shall remain in force and effect so long as said Caleb P. Marsh shall hold or control, directly or indirectly, the appointment and position of post-trader at Fort Sill aforesaid.

Fourth. This agreement shall take effect from the date and day the Secretary of War aforesaid shall sign the commission of post-trader at Fort Sill aforesaid, said commission to be issued to said John S. Evans at the instance and request of said Caleb P. Marsh, and solely for the purpose of carrying out the provisions of this agreement.

Fifth. Exception is hereby made in regard to the first quarterly payment under this agreement, it being agreed and understood that the same may be paid at any time within the next thirty days after the said Secretary of War shall sign the aforesaid commission of post-trader at Fort Sill.

Sixth. Said Caleb P. Marsh is at all times, at the request of said John S. Evans, to use any proper influence he may have with said Secretary of War for the protection of said John S. Evans while in the discharge of his legitimate duties in the conduct of the business as post-trader at Fort Sill aforesaid.

Seventh. Said John S. Evans is to conduct the said business of post-trader at Fort Sill aforesaid solely on his own responsibility and in his own name, it being expressly agreed and understood that said Caleb P. Marsh shall assume no liability in the premises whatever.

Eighth. And it is expressly understood and agreed that the stipulations and covenants aforesaid are to apply to and bind the heirs, executors, and administrators of the respective parties.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

JOHN S. EVANS. [SEAL.]
C. P. MARSH. [SEAL.]

Signed, sealed, and delivered in presence of—
E. T. BARTLETT.

It will be noticed, Senators, that the parties, after seeing the Secretary of War separately and receiving the directions as I have stated, made their preliminary arrangement and left for New York, without again calling on the Secretary on the subject. What do we next learn in regard to the appointment? It is the letter from Marsh to the respondent, written on the 8th October, the same day of the agreement, and sent from the city of New York by mail to Mr. Belknap. This is the letter which was never put on the files of the War Department, which was never indexed by Crosby in the index of semi-official letters which was taken away by the respondent from the files of the War Office, and only produced here on notice by us that unless produced we should give parol evidence of its contents. It is the key which unlocks the whole mystery which surrounds this case up to this point, and lays bare the motives which actuated the respondent in making the appointment of Evans. It reads:

No. 51 WEST THIRTY-FIFTH STREET,
New York City, October 8, 1870.

DEAR SIR: I have to ask that the appointment which you have *given to me* as post-trader at Fort Sill, Indian Territory, *be made in the name* of John S. Evans, as it will be more convenient *for me* to have *him manage the business at present.*

I am, my dear sir, your very obedient servant,
C. P. MARSH.

P. S.—Please send the appointment to me, 51 West Thirty-fifth street, New York City.

Hon. W. W. BELKNAP,
Secretary of War, Washington City.

Although this lettter is the one upon which the defendant obviously acted in making the appointment in the *name of Evans*, as the appointment was sent according to the request contained therein, it was withdrawn from the War Office by the defendant about the time of his resignation and was only produced in pursuance of notice by us, as I have already stated.

Two days after this the respondent made the following appointment:

WAR DEPARTMENT,
Washington City, October 10, 1870.

SIR: Under the provisions of section 22 of the act of July 15, 1870, you are hereby appointed a post-trader at Fort Sill, Indian Territory, and will be required to assume your duties as such within ninety days from the date of this appointment. You will please report to this Department through the Adjutant-General's Office your acceptance or non-acceptance of this appointment.

WM. W. BELKNAP,
Secretary of War.

Mr. JOHN S. EVANS,
Care of C. P. Marsh, Esq., 51 West Thirty-fifth street, New York City.

Senators, can any man fail to see the obvious truth shown by this letter, and the inferences which are inevitable from the circumstances and language employed? Was there ever any agreement, says the defendant's counsel to Marsh, between you and Mr. Belknap that he should share in any money paid you by Evans? Of course Marsh replied there was none. But what does this letter show? On its face it is a proposition to farm out this appointment for the benefit of Marsh. "I want my appointment as post-trader at Fort Sill made in the name of Evans, as it will be more convenient for me to have him manage the business for me at present," is the fair import of its language. General McDowell was nearer right than appears on the surface when he assumed that Marsh and not Evans was the post-trader at Fort Sill.

The appointment it will be seen was sent to Marsh as requested, and Evans on the 1st day of December, 1870, accepted the same by letter to the Adjutant-General as provided in the appointment. On the 14th of January, 1871, the defendant issued an order as follows:

A. G.:

Commanding officer at Fort Sill to be notified to remove all traders from that post except Mr. J. S. Evans, who was appointed by Secretary of War under act July 15, 1870. I understand that Mr. Walker still remains there with stock of goods.

W. W. B.

JANUARY 14, 1871.

This was sent on the 17th of February, 1871, to Colonel Grierson, in command at Fort Sill, and on the 26th of February, 1871, Colonel Grierson reported to the Secretary as follows:

HEADQUARTERS, FORT SILL, INDIAN TERRITORY,
February 26, 1871.

SIR: I have the honor to acknowledge the receipt of communication of January 17, 1871, relative to the removal of all traders from this reservation other than J. S. Evans, who has been appointed by the Secretary of War.

Immediately upon being informed by Mr Evans that he was prepared to enter upon the duties of trader, Mr. Walker was notified to close his store and remove his stock, &c., from the military reservation without delay. (Copy of letter herewith inclosed.)

Mr. Walker failing to sell his goods to Mr. Evans, was given a reasonable time to obtain the necessary transportation to remove his property, which arrangement was perfectly satisfactory to Mr. Evans, as he informed me then and since. The goods, buildings, &c., were all removed about the 1st of January.

Very respectfully, your obedient servant,

B. H. GRIERSON,
Colonel Tenth Cavalry, Commanding.

To the ADJUTANT-GENERAL, *United States Army,*
Washington, District of Columbia.

We prove by the Adjutant-General that simultaneously with the appointment of Evans an order was issued containing the following:

As soon as Mr. Evans shall be prepared to enter upon the discharge of his duties, you will cause the removal from the military reservation at Fort Sill, Indian Territory, of all traders not holding a letter of appointment from the Secretary of War under said act.

This the Adjutant General states was the form of an order sent upon the appointment of each post-trader; but the order of the 14th January, 1871, which I have read, was applicable at Fort Sill only. Upon the receipt of the order issued upon the appointment of Evans, the officer in command at Fort Sill gave notice to the other traders at Fort Sill to immediately close their stores and remove from that military reservation. There were at that time trading at Fort Sill Messrs. Walker, J. C. Dent & Co., and Mr. Durfee. They all had valuable stocks of goods, and it was as detrimental to them to be compelled to leave as the respondent said to Marsh it would be to Evans. But they were in the way of the objects sought to be accomplished by appointing Evans for the convenience of Marsh, and so they had to "step down and out," no matter at what sacrifice. On the 1st of June, 1870, the respondent issued his order, among other things re-

voking the Army Regulations in regard to sutlers, which are in the following words:

196. The post council shall prescribe the quantity and kind of clothing, small equipments, and soldier's necessaries, groceries, and all articles which the sutlers may be required to keep on hand; examine the sutler's books and papers, and fix the tariff of prices of the said goods or commodities; inspect the sutler's weights and measures; fix the laundress's charges, and make regulations for the post school.

197. Pursuant to the thirtieth article of war commanding officers reviewing the proceedings of the council of administration will scrutinize the tariff of prices proposed by them, and take care that the stores actually furnished by the sutler correspond to the quality prescribed.

So that by this act of the defendant Evans was allowed to charge his own prices without check or restraint from any one.

In October, 1871, a serious complaint was made against Evans that he was introducing spirituous liquors and wines and ale into the Indian country. The complaint was made by the United States attorney of the western district of Arkansas to the Solicitor of the Treasury, and by him on the 28th of October, 1871, referred to the Secretary of War. On the 2d of November, 1871, the defendant informed the Solicitor that Evans & Co. had the right to take to that post ten gallons of brandy and ten gallons of whisky monthly for the use of the officers, but no permit had been given him to introduce any liquors into that country. The defendant has proved that on the 28th of October, 1871, the same day Solicitor Banfield referred the matter to him for consideration, he, without request from any one, so far as appears, and certainly without the advice of the officers stationed at the post, or any of them, issued an order to Evans of his own volition, which could not have reached Evans before the letters of the 2d and 8th of November. On the 8th of November, 1871, the defendant addressed to the Solicitor the following:

WAR DEPARTMENT, *November* 8, 1871.

SIR: In further response to your letter of the 28th ultimo on the subject of the alleged illegal introduction of liquors, &c., into the Indian country by certain persons, among others Evans & Co., of Fort Sill, I have the honor to inform you that Mr. John S. Evans, post-trader at Fort Sill, through his friends, denies having taken liquor into the Indian country without authority. Mr. Evans was appointed to the post-tradership on October 10, 1870, and holds it in his own name, and not in that of Evans & Co., and no complaint has ever been made against him by the military authorities at Fort Sill, he having been regarded a good and law-abiding business man.

I therefore request that no proceedings be commenced against him without a thorough investigation of the charges that he has been engaged in such practices shows they were well founded.

Very respectfully, &c.,

W. W BELKNAP,
Secretary of War.

THE SOLICITOR OF THE TREASURY.

Who were the "friends" through whom the Secretary had been informed that Evans denies having taken liquor into the Indian country without authority? Nothing could have been heard from Fort Sill, as it would have taken at least fourteen days to hear from there by mail if there were no delay in the answer. The records of the War Department show no such communication by mail or telegraph; and this instruction not to prosecute Evans and the permit of the 28th of October were acts of favoritism on the part of the defendant, the reason for which will be apparent when we consider the remaining evidence in the case.

It does appear, however, that on the 18th of November, 1871, the defendant wrote General Grierson on the subject and received from him an answer, as follows:

[Personal.]

FORT SILL, INDIAN TERRITORY, *December* 8, 1871.

SIR: Respectfully referring to your letter of the 18th ultimo, I have the honor to report that more ale, wine, and porter was introduced by John S. Evans than was contemplated by me in my indorsement of July (August) 22, 1871; but it was done by the authority of the officer temporarily in command of the post while I was absent in the field.

I do not think that the post-trader has strictly complied with the provisions of my indorsement referred to; yet I believe it was not his intention to violate the restrictions imposed therein. As to the amount introduced, I respectfully refer you to the report of John S. Evans, also to a copy of the indorsement authorizing the introduction, herewith inclosed.

Very respectfully, your obedient servant,

B. H. GRIERSON,
Colonel Tenth United States Cavalry, Commanding.

Hon. W. W. BELKNAP,
Secretary of War, Washington, D. C.

Although this letter is marked "personal," unlike the Marsh letter, not so designated, it was placed on the files of the War Office. On the 5th December, 1871, the defendant addressed a similar inquiry to General Sheridan, to which no answer was ever received or at least none appears on the records of the War Office. The alleged irregularity of Evans being thus bridged over for the time, nothing occurred to revive the excitement until the Tribune article of the 16th of February, 1872. General Hazen, who had been in command at Fort Sill, furnished the facts therein stated. This the defendant knew, and he also knew the contents of the article so published.

This publication, after stating the history of the abolition of the sutlerships, which were under the control of the council of administration as to their charges, and stating the fact that after the war it was provided that the Commissary Department should furnish the articles theretofore kept by sutlers at cost price; that this was regarded as irksome and was disregarded, and that on the recommendation of the defendant the act of 1870 was enacted, concludes with the following quotation from an officer stationed at Fort Sill:

I have incidentally learned that you have a desire to know whether a bonus is required from the traders here for the privilege of trading, and have been urged to write you the facts in the case. As there seems to be no secret made of the matter and as, in common with all others here, I feel it to be a great wrong I think you will readily excuse the presumption which my writing unasked by you might indicate. I have read the contract between J. S. Evans, a Fort Sill trader, and C. P. or C. E. Marsh, of 1867 or 1870, Broadway, New York, office of Herter Brothers, whereby J. S. Evans is required to pay said C. P. or C. E. Marsh the sum of $12,000 per year, quarterly in advance, for the exclusive privilege of trading on this military reservation. I am correctly informed that said sum has been paid since soon after the new law went in force, and is now paid, to include some time in February next. This is not an isolated case. I am informed by officers who were stationed at Camp Supply that Lee & Reynolds paid $10,000 outright for the same exclusive privilege there. Other cases are talked of, but not corroborated to me; sufficient to state, the tax here amounts to near $40 per selling day, which must necessarily be paid almost entirely by the command, and you can readily see that prices of such goods as we are compelled to buy must be grievously augmented thereby. It not being a revenue for the Government and Mr. Marsh being an entire stranger to every one at the post, it is felt by every one informed of the facts to be, as I said before, a very great wrong.

On the 17th of February, 1872, the defendant addressed to the commanding officer at Fort Sill the following order and inquiry:

WAR DEPARTMENT,
Washington City, February 17, 1872.

The commanding officer at Fort Sill will report at once directly to the Adjutant-General of the Army, for the information of the Secretary of War, as to the business character and standing of J. S. Evans, post-trader at that post, whether his prices for goods are exorbitant and unreasonable or whether his goods are sold at a fair profit; whether the prices charged now and since his appointment to that position by the Secretary of War, under the act of July 15, 1870, are higher than those charged by him prior to that appointment, when he was trader under previous appointment; whether he has taken advantage of the fact that he is sole trader at that post to oppress purchasers by exorbitant prices; whether he charges higher prices to enlisted men than to officers; and whether he has complied with the requirements of the circular of the Adjutant-General's Office issued June 7, 1871.

The commanding officer is expected to make as full and as prompt report as is possible.

W. W. B.

It will be observed there is not a word in this about the real evil, the payment of the $12,000 per year quarterly in advance, one-half of which had been regularly sent to the defendant as we have proved.

The response of General Grierson shows how a disinterested and faithful officer performed his duty, and is as follows:

HEADQUARTERS, FORT SILL, INDIAN TERRITORY,
February 28, 1872.

ADJUTANT-GENERAL, UNITED STATES ARMY,
Washington, D. C.

SIR: I have the honor to acknowledge the receipt of your letter dated February 17, 1872, relative to the post-trader at this post.

I understand J. S. Evans's character as a business man is good, and he has heretofore given general satisfaction; but Mr. Evans is absent, and has been for some months, and has associated with him J. J. Fisher, now also absent, who has had control of the establishment and who claims to have the greater pecuniary interest in the business, (the business being conducted, however, under the name of J. S. Evans.) Repeated complaints have been made to me of the exorbitant prices at which goods were sold by them, and when I have represented the matter to the firm they replied that they were obliged to pay $12,000 yearly (to a Mr. Marsh, of New York City, who they represent was first appointed post-trader by the Secretary of War) for their permit to trade, and necessarily had to charge high prices for their goods on that account. I have repeatedly urged them to represent this matter in writing to me, in order that I might lay the matter before the proper authority to relieve the command of this burden, upon whom it evidently falls; but they declined to do so, stating that they feared their permit to trade would be taken from them.

As the prices could not be regulated by a council of administration, the trader not being a sutler, it has been contemplated by some of the officers of the garrison to represent this matter, without reference to J. S. Evans, through the proper military channels, but as it was claimed that the authority for the tradership emanated from the Secretary of War it was feared that that course might be construed as taking exception to the action of superior authority.

The prices are considerably higher since his appointment by the Secretary of War than previously, and he has undoubtedly taken advantage of his position as sole trader in charging these exorbitant prices, giving the reasons above quoted, stating that he could not, under the circumstances, sell goods at lower prices.

It has also been reported to me that he charges enlisted men greater prices for the same articles than he does officers, and, at all events, it is very evident that the officers and men of this garrison have to pay most of the $12,000 yearly, referred to above, they being the consumers of the largest portion of the stores.

I feel that a great wrong has been done to this command in being obliged to pay this enormous amount of money under *any* circumstances; the largest portion of which, at least, has been taken from the officers and enlisted men of this post, nearly *all* the money of the latter mentioned going to the trader. The responsible party of this great injustice should be *held* responsible and be obliged to refund the money.

If J. S. Evans has *not* paid this exorbitant price for permission to trade, as stated by him, his goods should be seized and sold for the benefit of the post fund.

In order to insure a healthy competition, to reduce the price of goods, and to relieve the officers and soldiers of this garrison from this imposition, I recommend that at least three (3) traders be appointed, and that those appointments be made upon the recommendation of the officers of the post; that each trader be *known* to be interested only in his own house, and that they be obliged to keep such articles as are required for the use of officers and enlisted men of the Army, and to sell them at moderate prices.

The trader complies with circular of A. G. O. issued June 7, 1871, as far as I am aware.

The buildings, (store, &c.,) however, are not convenient to the present garrison, having been built at the time when the command was in camp.

Very respectfully, your obedient servant,

B. H. GRIERSON,
Colonel Tenth Calvary, Commanding.

Received in the office of the Adjutant-General March 9, 1872.

[Indorsement.]

WAR DEPARTMENT, A. G. O., *March* 11, 1872.

Respectfully forwarded to the Secretary of War, with application of C. P. Marsh for tradership at Fort Sill.

E. D. TOWNSEND,
Adjutant-General.

What action did the defendant take on the receipt of this which the proof shows was on the 9th March, 1872? None whatever. While he should have at once issued an order removing Evans, as the President did when the facts were brought to his knowledge, he forbore action until General McDowell waited on him and told him it was a "thing that would be damaging to the service if it was not at once corrected." General McDowell also told him it concerned him personally. The Secretary said in substance that these traders were not sutlers and the military had no power to control them. He had obtained the unqualified opinion of the Judge-Advocate-General, dated March 16, 1872, that he had not and could not exercise control over post-traders as to the prices at which they should sell goods to soldiers and others.

Yet, with the concurrence of General McDowell, who was acting upon the mistaken view that Marsh was the post-trader and Evans his agent, he issued the order of the 25th March, which the Adjutant-General says is all the notice he ever took of General Grierson's letter; and to this order I desire to call the particular attention of Senators. It is as follows:

[Circular.]

WAR DEPARTMENT,
Washington City, March 25, 1872.

I. The council of administration at a post where there is a post-trader will from time to time examine the post-trader's goods and invoices or bills of sale; and will, subject to the approval of the post-commander, establish the rates and prices (which should be fair and reasonable) at which the goods shall be sold. A copy of the list thus established will be kept posted in the trader's store. Should the post-trader feel himself aggrieved by the action of the council of administration, he may appeal therefrom through the post-commander to the War Department.

II. In determining the rate of profit to be allowed, the council will consider not only the prime cost, freight, and other charges, but also the fact that, while the trader pays no tax or contribution of any kind to the post fund for his exclusive privileges, he has no lien on the soldier's pay, and is without the security in this respect once enjoyed by the sutlers of the Army.

III. Post-traders will actually carry on the business themselves, and will habitually reside at the station to which they are appointed. They will not farm out, sublet, transfer, or sell or assign the business to others.

IV. In case there shall be at this time any post-trader who is a non-resident of the post to which he has been appointed, he will be allowed ninety days from the receipt hereof at his station to comply with this circular or vacate his appointment.

V. Post-commanders are hereby directed to report to the War Department any failure on the part of traders to fulfill the requirements of this circular.

VI. The provisions of the circular from the Adjutant-General's Office of June 7, 1871, will continue in force except as herein modified.

By order of the Secretary of War:

E. D. TOWNSEND,
Adjutant-General.

It will be seen, as stated by my learned associate [Mr. MCMAHON] during the trial, that this order entirely fails to correct the real evil, that is, the payment by Evans to Marsh of $12,000 a year as a consideration for receiving the appointment and retaining the post. It is true it professes to vest in the council of administration the power to examine the post-trader's prices, which the Judge-Advocate had just informed him he had no power to do, and to determine the prices at which the trader should sell, which should be fair and reasonable, considering not only the cost and freight, but the fact that the trader had no lien on the soldiers' pay as sutlers had, and then adds:

Should the post-trader feel himself aggrieved by the action of the council of administration he may appeal therefrom to the War Department!

How Marsh and Evans must have been gratified when they saw this order. The only effect it had on their arrangement was to reduce the amount to be paid from $12,000 to $5,000 per year, of which reduction, as well as the agreement with Evans, Marsh testifies he informed the defendant within a month after the Tribune article—the first time he saw him after, which was in New York—and the Secretary then informed him Hazen inspired that article, but made no inquiry as to the terms of the contract with Evans or as to why the amount had been reduced from twelve to six thousand dollars.

A part of the evidence of General McDowell is very pertinent in this connection, and I ask leave to call attention to it. It is as follows:

Question. (By Mr. CARPENTER.) I ask you, General, whether on reflection and after looking at that article you think you were or were not mistaken in saying that you supposed that Marsh was the post-trader at the time you had your interview with the Secretary of War?

Answer. I can hardly say what particular relations Marsh or Evans had with this matter. The Secretary told me he had appointed Marsh, and I supposed he had received the office. Whether he had transferred it, or assigned it, or sublet it, or farmed it out, or what relations he had with it was not, in my mind, a very special question. What I wanted to do was to correct an abuse; but whether the form was that Marsh was the trader or the other man was the trader was not so much in my mind as to discuss the question that was then up

Q. Was it of any importance whether Marsh was the trader and Evans his agent, or the reverse?

Mr. Manager MCMAHON. O, you do not insist on that question.

Mr. CARPENTER. If not I should not have asked it. (To the witness:) What I mean is, would it have made any difference with the order which you were to draw if you had known the fact to be exactly the reverse? Would not this order as you drew it have covered the abuse in the one case just as well as the other? That is the question.

Mr. Manager MCMAHON. We withdraw the objection.

The WITNESS. (to Mr. Carpenter.) I do not understand you.

Q. (By Mr. CARPENTER.) The question is this: Suppose you had known that Evans was the trader and lived at Fort Sill and that Marsh was not the trader, would you have drawn this order in any different terms than you did employ?

Mr. Manager HOAR. Do you mean to suppose in your question that Marsh received any sum of money from Evans?

Mr. CARPENTER. If that occurs to me I will put it in my question. It had not occurred yet as part of my question.

The WITNESS. If the case was otherwise, it would have been different, of course.

Q. (By Mr. CARPENTER.) How different would it have been? Suppose you had thought at the time that Mr. Marsh was the trader and lived in New York, what order would you have drawn different from this?

A. That is what I supposed was the case, that Mr. Marsh was the trader living in New York substantially, whether in form or not; and he had the control of the place as evidenced by the fact of his receiving this large tribute.

Q. As you supposed?

A. As was true, and seemed to be understood.

Q. Suppose the case had been exactly the reverse, and you supposed that Mr. Evans had control of it and was the trader, and not Marsh; would your order have been drawn any differently?

A. *I do not know. If the man was residing at the post, I do not think it would have suggested itself to my mind to say he should go there.*

Q. That is one thing. Now let me call your attention to the first part of this order, to see if that is not the material part of it after all. Please read the first clause of the order.

A. It is—

"I. The council of administration at a post where there is a post-trader will from time to time examine the post-trader's goods and invoices or bills of sale; and will, subject to the approval of the post-commander, establish the rates and prices (which should be fair and reasonable) at which the goods shall be sold. A copy of the list thus established will be kept posted in the trader's store. Should the post-trader feel himself aggrieved by the action of the council of administration, he may appeal therefrom through the post-commander to the War Department."

Q. Now I want to know why that order would not have corrected the abuse there without regard to whether the trader lived at the post or not, if the order had been executed by that council?

A. Very likely it might have done so.

Q. Would it not have done so?

A. I do not know.

Q. Can you conceive how it could fail to do it?

A. Yes; because it has failed.

Re-examined by Mr. Manager MCMAHON:

Q. Did I understand you to say that General Belknap told you he had appointed Marsh?

A. He told me that he had offered the place to Marsh; I think he said he had offered it or had appointed him, and he told me why, under what circumstances.

Q. What were those circumstances? What circumstances did he tell you?

A. It was something bearing on the relations between Mr. Marsh and his wife.

Q. Friendly relations between them?

A. Relations of kindness while she was sick.

Q. Do you remember the time that she was sick?

A. I do not.

Q. In this interview between you and General Belknap, did he make any allusion, or did you, to the fact that Evans was paying Marsh $12,000, as stated in that Tribune article?

A. I made it in the beginning of my conversation with him.

Q. What did the general say in answer?

A. I cannot recollect that he said anything in answer to that, further than to ask me to draw up such an order as would correct the abuse which I had stated to him, that complained of.

Q. Did he request you then to draw up an order to correct the payment by Evans to Marsh of $12,000 a year?

A. No, sir.

What has become of the debt of gratitude to Mrs. Marsh for her kindness to Mrs. Belknap in her illness? The natural expression of obligation would have been to her. Marsh was about his business and at his store. Suppose, Senators, that the defendant had told General McDowell the truth, as he now claims it and as is abundantly established by the evidence—suppose he had said, "General, I promised the place to Marsh, who had no support, in consideration of his kindness to my wife when ill at his house in September, 1870? At the request of Marsh I appointed Evans, which Marsh stated would be more convenient to him at present. Evans has paid Marsh $12,000 per year, as stated in the Tribune article. One-half of that sum Marsh has sent to me quarterly in advance: the first $1,500 for my wife, the next two payments of $1,500 each for my child, and since the decease of the child the like quarterly payments have been made to me for my own use and I have received and used the money, 'asking no questions for conscience sake.'" If he had said this, does any Senator or any one who hears me suppose that General McDowell would have drawn the order of March 25? On the contrary, he would have fled from the War Department as from a pestilence, knowing that his kind offices would no longer be of any avail to the defendant. But the defendant concealed the truth, and, as I have already said, allowed General McDowell to act upon a mistaken theory, and that is the reason why the order made, and which it was supposed would correct the evil, in no manner reached it except to work the reduction from twelve to six thousand dollars. The order did not in fact accomplish that. It was the alarm created by the Tribune exposure and the fear that if twelve thousand continued to be exacted from the soldiers it would inevitably lead to an investigation and would develop the monstrous iniquity and fraud with which the whole scheme leading to the appointment of Evans was tainted.

Senators, in this connection I will call your attention for a moment to the evidence of General Hazen. He appears to have been an earnest supporter of the policy of the law of 1866 or 1867, which made provision that soldiers should be supplied with goods at cost. He estimates that it would have been a saving of two millions annually. Having command at Fort Sill and learning the complaints there about Evans, he wrote the facts upon which the article in the Tribune was based. He was summoned and appeared before a committee of the House and gave his testimony. Although that evidence has been excluded on this trial, it is evident the defendant knew what it was. He also knew, for he complained of the fact, that Hazen inspired the article in the Tribune. Yet the defendant never made any inquiry of Mr. Smalley, the correspondent here who wrote the article, or of Whitelaw Reid who published it. He asked General Grierson for a report which he received before the order of the 25th of March, and upon which, as I have stated, no official action was ever taken. The

letters of General Hazen, written since to the defendant and to Mr. CLYMER, are put in evidence to destroy his credit. I submit, Senators, that the letter to the defendant, written at his request after the Secretary had seen Hazen and frowned upon him as a military superior, so far from detracting from the credit due to General Hazen, strongly supports him for his sincerity and his subordination to superior authority. Even General Grierson, as Senators will remember, states in his answer of the 28th of February, 1872:

> I have repeatedly urged them—
>
> Evans & Co.—
>
> to represent this matter in writing to me, in order that I might lay the matter before the proper authority to relieve the command of this burden, upon whom it evidently falls; but they declined to do so, *stating that they feared their permit to trade would be taken from them.*
>
> As the prices could not be regulated by a council of administration, the trader not being a suttler, it has been contemplated by some of the officers of the garrison to represent this matter, without reference to J. S. Evans, through the proper military channels, but as it was claimed that the authority for the tradership emanated from the Secretary of War *it was feared that that course might be construed as taking exception to the action of superior authority.*

Here is the same fear of superior authority expressed and exhibited by Hazen. A great and insufferable evil could not be even reported to the Secretary of War through military channels without fear that the course might be construed as taking exception to the action of superior authority; a very delicate hint by General Grierson, as the request of the Secretary gave him the opportunity to make it, that the Secretary probably knew all about the matter and it had received his sanction.

Why, I repeat again, Senators, did the defendant pass by this most important letter and the terrible disclosures it contained without action and without any instructions to General Grierson to correct the evil? There is, there can be no other answer than the one disclosed by the case, that he had appointed Evans at Marsh's request and for his benefit, as an act of kindness to him, and that Marsh was remitting to him quarterly one-half of the $12,000 he received from Evans.

Mr. Marsh states that he was accustomed when he received a remittance from Evans under the contract of the 8th of October, 1870, to write the defendant in substance, "I have a remittance for you from the S. W.; how shall I send it?" He states that in answer thereto he received instruction by mail to send by express or by certificate of deposit or to purchase a government bond, or to hold the money to be paid personally, and in one instance to be paid to the wife of the defendant. The defendant admitted the receipt by an "O. K.," and his letters as received were destroyed by Marsh. In one or the other of these modes Marsh states he remitted and paid to the defendant one-half of all the money he received from Evans. We show by Evans and Fisher that $3,000 was sent by them to Marsh quarterly up to February, 1872, and semi-annually afterward down to the fall of 1875, including an advance to February, 1876. Their accounts are brought to confirm the correctness of their statements. Marsh states that he deposited the money in the National Bank of Commerce, New York, and checked it out for the purpose of paying the defendant. We show by the books of that bank and the evidence of the assistant cashier, Mr. King, that Marsh made deposits corresponding generally with the remittances of Evans and drew checks corresponding generally with the payments to the defendant.

The witness identifies four certificates of deposit. One for $1,500, dated November 10, 1871, is indorsed by Marsh to the defendant, and by the defendant to C. F. Emery, by whom we prove he loaned the money at the request of the defendant in Iowa upon a note and mortgage having three years to run; that the loan has been renewed for three years more, and the interest notes on the renewal are made payable to the defendant's present wife, but the original mortgage and note are in the defendant's name. Since Marsh has testified that the defendant's present wife was never to have any interest in this money, and that all which was sent after the death of the defendant's child in 1871 was for the defendant's use, we do not regard this change in the interest notes as of any importance. Another certificate for $1,500, dated January 18, 1872, indorsed by Marsh to the defendant. This we trace by the evidence of Mr. William H. Barnard, the clerk of the receiver of the First National Bank of Washington, and, by a deposit ticket, in the handwriting of the defendant, into his private account in that bank on the 29th of January, 1872, and Mr. Barnard identifies the last-named certificate as being part of such deposit and as having passed through the bank, as the indorsement upon it shows. The other two are certificates dated October 9, 1874, one for seven and the other for eight hundred dollars, both indorsed by Marsh to the defendant, and by him indorsed to other parties.

We also show by the officers of the Adams Express Company the receipt of money packages by express to the defendant from Marsh and from R. G. Carey & Co., the firm of Mr. Marsh, in whose name he states some of the later remittances were made, as follows: November 1, 1870, $1,500, receipted by defendant in person; January 17, 1871, $1,500, receipted by the defendant; April 17, 1871, $1,500, receipted by the defendant; November 4, 1873, $1,500, delivered to Mr. Crosby for the defendant; April 10, 1874, $1,500, from Carey & Co., receipted by Barnard for the defendant; May 24, 1875, $1,500 from Carey & Co., receipted by Crosby; November 8, 1875, $500 from Carey & Co., receipted by defendant. We prove by Crosby and Barnard that they were clerks in the defendant's office, and authorized to receive and receipt packages for him. Mr. Marsh states that he paid the last half of $1,500 to the present wife of the defendant by his direction at the Saint James Hotel in New York in November or December, 1875. We show the defendant to have been in New York at several times when payments were coming from Evans, and Marsh states that except as he sent by express or certificate of deposit or the purchase of a Government bond, he paid the defendant personally and generally in New York.

I should weary the patience of the Senate if I pursued this inquiry in detail any further. The evidence of these quarterly payments down to February, 1872, and of the half-yearly payments from that time down to November, 1875, is so full and complete as to leave no room for doubt on the subject, and Marsh is so completely confirmed by the evidence as to leave no question as to his being entitled to credit for all he does remember. He is not a willing, but, on the contrary, a reluctant witness. We show by Mr. CLYMER that in the general statement he prepared he failed directly to implicate the defendant. It was only by direct questions that the facts were drawn out. The case discloses he was anxious to so adjust matters as to save exposure. His letter to the committee before the examination, which was read to the defendant, discloses that fact. When pressed, he said:

> If I swear I shall tell the truth, and that will ruin Secretary Belknap.

When, therefore, the witness Marsh gives it as his best recollection he conversed with the defendant on the evening of his wife's funeral and was directed by him about sending the money, we submit he is entitled to belief, although his memory is vague on the subject. The subsequent acts of the parties fully confirm him in such statement.

When asked by us whether the defendant knew from what source this money came, the witness Marsh answered:

> I should say that I presume he did.

Standing by itself this would not be a very satisfactory item of evidence, but the Senator from Wisconsin [Mr. HOWE] and the Senator from Iowa [Mr. WRIGHT] addressed to him the following questions, and the answer of Marsh, especially to the last question, throws a flood of light upon this case:

> Mr. HOWE. If the court has not closed its case, I should like to have the question answered which I send to the Chair.
>
> The PRESIDENT *pro tempore*. The question of the Senator from Wisconsin will be read.
>
> The Chief Clerk read as follows:
>
> Q. Was the money which you sent to General Belknap designed for his use or for the use of some other person?
>
> A. I sent it to him originally according to what I have heretofore stated occurred on the night of the funeral. It may be presumed that it was sent for the child, but I continued sending it after the child's death to the General, and I always presumed it was for him.
>
> Mr. WRIGHT. I have a question I wish to propound, and I will read it in the first instance, as it is not very legible.
>
> Q. You said on yesterday that you presumed that General Belknap knew from whom the money sent him was received. Now state what led you to so presume, or upon what you based this presumption.
>
> Mr. CARPENTER. We object to this question. Let it be read again.
>
> The PRESIDENT *pro tempore*. The question will be read by the Secretary.
>
> The Chief Clerk read the interrogatory of Mr. WRIGHT.
>
> The question being put, was decided in the affirmative.
>
> The PRESIDENT *pro tempore*. The witness will answer the question.
>
> The WITNESS. I said I presumed he knew where it came from.
>
> Mr. CARPENTER. Now it appears there was a mistake, as I thought. The question does not correctly state the case to the witness. The question and answer yesterday were exactly this:
>
> "Q. Did General Belknap at this time know where the money was coming from that was being paid to him?
>
> "A. I should say that I presume he did."
>
> The PRESIDENT *pro tempore*. The question will be answered. It will be read again to witness.
>
> The Chief Clerk again read the question of Mr. WRIGHT, as follows:
>
> Q. You said on yesterday that you presumed that General Belknap knew from whom the money sent him was received. Now state what led you to so presume, or upon what you based this presumption.
>
> Mr. Manager MCMAHON. Before the question is answered, there is a misunderstanding as to what the real meaning of the answer given yesterday is. Our object in putting the question was to ascertain whether Belknap knew where the money was coming from, not the person, not the man from whom it came, but the place.
>
> Mr. WRIGHT. This question covers the whole ground.
>
> Mr. Manager MCMAHON. Go on.
>
> The WITNESS. *I presumed that he knew, because he had appointed Mr. Evans to this post at my request. I had no other business transaction with General Belknap whatever except sending this money. I had sometimes forwarded him requests of Mr. Evans sent to me for certain privileges wanted around the fort. I cannot give details particularly. It is a kind of general knowledge arising from our relations together.*

There is equal force and pertinency in the two questions propounded to the witness by the Senator from Indiana [Mr. MORTON] and the answers of Marsh to the same:

> Mr. MORTON. I submit the following interrogatory:
>
> Q. Did General Belknap personally or through any person or by letter ever inquire of you why this money was sent, and did you in any way ever assign a reason to him for it?
>
> A. Never to my best recollection.
>
> Mr. MORTON. I propose the following question:
>
> Q. How often after the first money was sent to Belknap and before your examination before the committee of the House did you meet General Belknap, and was the money ever referred to in conversation at any of these interviews?
>
> A. For the first two or three years, I saw him perhaps two or three times a year. The first money I sent General Belknap must have been in the spring of 1871. I suppose probably through that year and 1872 and 1873 I met him two or three times a year; but I have no recollection of the money having been referred to in any conversation between us.

Why this reticence? Legitimate business transactions would have been the subject of conversation without doubt. The only occasion

when the defendant broke silence was the next time he met Marsh after the Tribune article. He asked Marsh if he had a contract with Evans, and Marsh replied he had. Marsh asked him who inspired or wrote that article, and the defendant said General Hazen. Marsh then told him he had reduced the amount from $12,000 to $6,000, and the defendant said nothing. Could the receipt of money after that have been innocent, especially when only half as much was sent as before, or half of six instead of twelve thousand dollars per year.

Senators, there is no escape for the defendant upon the question of his guilty knowledge as to the source from which this money came.

He made no inquiry of General Hazen or Mr. Smalley or Mr. Reid as to the Tribune article. He took no notice of the grave charges made by General Grierson in his letter of the 28th February, 1872, for which, as I have said, any disinterested and upright officer would have removed Evans on the spot. He disregarded General Grierson's recommendation to have three post-traders and competition. He overlooked and covered over with pretenses clearly false the charges made against Evans in the fall of 1871. He kept Evans in place with full knowledge he was paying this large bonus to Marsh and taking it out of the soldiers in exorbitant prices because he was securing to his own use one-half of all that Evans paid to Marsh. A more flagrant case of a breach of official duty was never presented for the consideration of any tribunal.

There is a maxim of the law that when the circumstances of a case are fairly calculated to put a person of ordinary care and prudence upon inquiry, and he omits to investigate, he is presumed to know the real facts, and is chargeable the same as though he made inquiry and ascertained the truth. In criminal cases the rule is that when the evidence fairly construed creates a presumption against the defendant which if innocent he could explain, and he fails to give the explanation, the presumption is thereby strengthened.

This august tribunal can never decide, and with great confidence I submit that no member of the court, in view of the facts of the case, can find any ground in the case for an intelligent opinion that the defendant for a period of over five years could be the recipient of over $21,000, in installments of $1,500 each at regular intervals, without any business transactions with Marsh or any relations except those disclosed by the letter of the 8th of October, 1870, and yet be ignorant of the source from which the money came or the motives and purposes with which it was sent. The receipt and use of the money from time to time without inquiry as to why it was paid *implies guilty knowledge*, and no man of the intelligence of the defendant can escape the imputation.

If such receipt, by an officer making an appointment from the person at whose request it was made, for so long a period, as this case discloses, does not constitute official corruption, by what name in the law of official rectitude shall it be designated? For how long a period must they continue before ripening into official crime and turpitude? The defendant assumes that the receipt of a single present without some excuse, by which it could be interpreted as having been made for some other purpose than for a purpose to reward official favors, would constitute such crime. Hence the weak excuse set up in this case, that Mrs. Belknap was placed under lasting obligations to Marsh for his kindness to her. If Marsh had sent a single present of $1,500 to Mrs. Belknap with an explanation of the motive which prompted him to make it, even if sent through the hands of the defendant, he might be held innocent of wrong. But the money was sent without explanation, except as Marsh states he wrote:

I have a remittance for you from the S. W. How shall I send it?

Thereupon he received his instructions.

One Senator [Mr. DAWES] asked Marsh the following question:

Mr. DAWES. I wish to put a question which I desire to have anawered.

The PRESIDENT *pro tempore*. The Senator from Massachusetts submits an interrogatory, which will be read.

The Chief Clerk read as follows:

Q. Did you or any other person to your knowledge ever explain to General Belknap what "Southwest" means in your letters informing him that you had a remittance for him? If so, state the explanation.

A. Never, to my knowledge.

The Senator from Illinois [Mr. LOGAN] then propounded the following question:

Q. From the conversation with the present Mrs. Belknap, mentioned by you in your answer to my former interrogatory, you spoke of an understanding with the former Mrs. Belknap, now deceased. Please state what that understanding was.

The WITNESS. I think not.

Mr. CONKLING. What does the witness mean when he says he thinks not?

The WITNESS. I do not think I stated that I had an understanding with Mrs. Belknap.

Q. (By Mr. CARPENTER.) As I understand, the first money that you sent was sent to the former Mrs. Belknap, now deceased?

A. Yes, sir

Q. And that was sent without any arrangement between you and anybody?

A. Yes, sir.

Q. A clean, clear present?

A. Yes, sir.

Mr. LOGAN. The witness spoke of a conversation about the child; that the money would now go to the child according to some former understanding.

The WITNESS. *I said with General Belknap, not with Mrs. Belknap.* I said that I was under the impression at one time that I had said something to General Belknap himself the night of the funeral; that I certainly had an understanding with him or with Mrs. Bower, because Mrs. Belknap was then dead.

Q. (By Mr. Manager MCMAHON.) Had the present wife of General Belknap at any time any interest in the money that was sent to General Belknap by you?

A Not to my knowledge.

It is very evident from this answer of Marsh that he had an arrangement or understanding with General Belknap about the remittance of this money from time to time. In those cases where the money was paid in person what does the evidence disclose? The Senator from Maryland [Mr. WHYTE] asked Marsh this question:

Mr. WHYTE submitted the following question in writing:

Q. When you paid to General Belknap money in person did you have any conversation with him about the source whence the money came or in any way regarding it?

A. I did not.

At least $6,000 was thus paid by Marsh to the defendant after the death of his wife and child, and while he, as Marsh says, was entitled to the money for his own use. No receipt was given, no account kept, no inquiry made, not a word said. Did not the parties understand the reason for the payment and the source from which the money came? This was after General Belknap had been informed of the contract between Evans and Marsh and after the defendant had refused to interfere with Evans or appoint other post-traders as requested by General Grierson. The General did not even respond as when the money was sent by express or mail with an "O. K." This, I suppose, is one of the military ciphers used during the war by General Belknap. It certainly had a higher signification than that placed upon it by the ordinary Yankee, because it was used by a high official and dignified Cabinet officer. Marsh was not asked and it does not appear when the payments were made to the defendant personally whether he gave a wink or a nod or graciously smiled upon his benefactor. The probability is that after counting the money and ascertaining that the amount was correct he simply said "O. K."

Senators, suppose that during your six years' term men having bills pending before the Senate which it was in your power to pass or reject had been in the habit of sending you each $1,500 semi-annually, without a word of explanation, would you have been willing to accept and use the money, even though you learned it afforded the donors "pleasure to send it," and though they should protest in the language of respondent's counsel [Mr. Carpenter] that each successive payment was a "clean, clear present?"

I confess my amazement that distinguished counsel should suppose they can impose upon the credulity of any man a theory so absurd and so repugnant to a decent regard for official purity as this theory that these repeated payments by Marsh to Belknap were each and all "clean presents," involving no turpitude and no want of official integrity.

I have said that the letter of General Hazen written to the defendant at his request on the 12th of September last, after a personal interview between them, evinces that submission to superior authority which is shown by General Grierson in his letter of the 28th February, 1872.

The letter of General Hazen to Mr. Clymer dated the 15th March last, which the defendant has been pleased to introduce, discloses how a faithful military officer can speak when the restraint of superior authority has been removed. I desire to call the attention of Senators to that letter. It is as follows:

CITY OF MEXICO, *March* 15.

DEAR SIR: The papers of the 4th instant brought me the result of the Belknap investigation. By referring to the proceedings of the House Military Committee of March, 1872, you will find precisely the same information given by me then as that upon which your investigation was founded. Mr. Smalley, the then clerk of that committee, published in the New York Tribune the purport of my evidence, which only referred to the black-mailing of the post-traders, and not to the final disposition of the money; but he added to it the presumptive disposition, which is now proved to have been true. The Secretary of War took the newspaper paragraph to the President, as he has since said, remarking: "Mr. President, have you seen the article in the New York Tribune of this morning referring to me?" To which the President replied: "I have, and do not believe a word of it." The Secretary then said: "If you do believe it, I am no longer fit to hold a place in your Cabinet." This was the end of the matter both with the President and Congress, leaving it a question of veracity between the Secretary and myself.

I have waited patiently four years, never doubting I shall be finally vindicated, though at times feeling very heavily the weight of displeasure of those high in power for daring to tell the truth respecting the great outrage upon the Army. My object from the first was not only to relieve the Army from this outrage, but to obtain the execution of a most excellent law passed in 1866, requiring the Commissary Department to furnish to enlisted men at cost the articles usually furnished them by sutlers. This most admirable arrangement, which is virtually carried out in all other armies, would be worth to the enlisted men $2,000,000 annually, and cost nothing but a little extra work to the Commissary Department. This department has opposed this law from the first. In setting this law aside vitality and value were given to the post-traderships which could be done in no other way. The law itself has even been omitted from the Revised Statutes. To secure this most useful end was my only purpose. In the autumn of 1875 the Secretary visited my post, receiving my most cordial hospitality, which was fully accepted. I thought this a proper occasion for a renewal of our old and friendly relations, as we had served together in the war. I therefore wrote him a sincere letter looking to such a result, though I felt entitled to some reparation, having for four years experienced a full sense of the wrong inflicted upon me by the Secretary in his virtual denial to the President of my truthful report. The Secretary did not see fit to reply to my letter. I then concluded to let the matter rest, hoping only for the partial reparation that time gives all wrongs, when your letter in January, as chairman of one of the committees of Congress, called for the information furnished you. For your compliance with my request not to bring my name forward in connection with the investigation, I tender you my thanks, and now release you from further obligations in that respect.

Very respectfully, &c.,

W. B. HAZEN.

Hon. HIESTER CLYMER.

The learned counsel for the defendant [Mr. Carpenter] characterizes this letter as a slander upon the President. Far from it. The President did not believe the Secretary guilty. He still retained the

confidence which led to his selection. And the defendant is reported as saying to the President:

If you do believe it, I am no longer fit to hold a place in your Cabinet.

Suppose the defendant had then said: "Mr. President, Mr. Marsh has been sending to me one-half of all he has received from Evans, without a word of explanation and I have received it without any inquiry, regarding the remittances as 'clean presents.' The amount already is $9,000." How long, Senators, do you think the defendant would have remained in the Cabinet? He would have been saved the mortifying example of retreating before the charges when proved and of laying down his commission while the question of his guilt was under investigation. This act as we claim under the circumstances proved here is tantamount to a confession of guilt, was so considered at the time by the whole country, and must be so interpreted by every Senator on this floor.

But the defendant, according to the reasoning of his counsel, is entitled to great credit for the manner in which he treated the letter of Captain Robinson, written on the 2d of April, 1875. I ask leave to refer to it. It appears to have been filed, but when, the Adjutant-General could not state. He did not receive it until the 3d of March last.

[Personal.]

SAINT LOUIS BARRACKS, MISSOURI, *April* 2, 1875.

SIR: I have the honor to inform you that I am now preparing a set of charges against the firm of J. S. Evans & Co., post-traders at the post of Fort Sill, Idaho Territory. I have been stationed at that post since its first location in 1868. Among the many charges I am preferring against this firm is one of malicious slander, in which both members of this firm have repeatedly stated, not only to myself but to Brevet Major-General Hazen, Brevet Major-General Grierson, and many others of the officers of the Sixth Infantry and Tenth Cavalry, that they were paying you at one time $15,000 per year, at another date $12,000 per year, $1,000 per month in advance, and only a short time ago Mr. J. J. Fisher stated in my quarters at this post that he was still paying you the same amount. He also informed General Grierson at the same date at this post of what he termed "these facts." I was, while at the post of Fort Sill, Idaho Territory, on the post council of administration many times as its "recorder." The repeated statements of both J. S. Evans and J. J. Fisher to the fact that they could not sell their goods any cheaper to the men and officers of the United States Army because they were obliged to pay to the Secretary of War $15,000 per year, monthly in advance, I took down carefully with day and date and the names of the officers present who heard these statements made. They were made before me officially as the recorder of the post council of administration.

I have thought that you, sir, should know these facts before I brought them to your official notice by sending the charges to you through all of the official channels, and to ask your advice as to the best and most expeditious manner of bringing these men to justice. Every man and officer of these regiments have been most outrageously swindled by this firm, as I have abundant testimony to prove. If I leave the Army by sentence of the general court-martial that has just tried me, it is by getting into unavoidable debt to these men, who, after getting all the money I had, now seek to ruin me, knowing that I alone am in possession of all the facts in the case against them. I honestly believe that these slanders on your name and action are false, and shall bring this firm to speedy justice, whether I am in or out of the Army, and ask of you, sir, your advice as to my procedure before action. Should I remain in the Army, I shall, if you desire, transmit all of the documents entire to you for your information and such action as you may see fit to take. I will either act as prosecutor or witness, as you may elect. Many of my notes are at my home in Baltimore, some of them here; but I have enough to draw charges on here, which I am now doing. Several newspaper men have made me very alluring offers for these papers, but I prefer to take the course I am now doing, so as to get officially all the facts on record before a court of justice against these men.

I am, General, your obedient servant,

GEO. T. ROBINSON,
Captain Tenth Cavalry.

Hon. W. W. BELKNAP,
Secretary of War.

This letter was written at Saint Louis on the 2d of April. When it was received does not appear. The Adjutant-General states that when the defendant showed him this letter he remarked to the defendant that it looked like an effort at black-mail, that the Secretary then asked for the proceedings of the court-martial, and on the 14th of April, 1875, the defendant wrote upon them "approved by the President," and Robinson faded out under the action of superior authority, with this sentence upon him.

Q. (By Mr. CARPENTER.) Now, what was the judgment?
A. The sentence was, "to be cashiered and forfeit to the United States all pay and allowances now due or to become due, and to have his crime, name, place of abode, and punishment published in and about Philadelphia, Pennsylvania, and Saint Louis, Missouri." The sentence is "approved."

So Robinson was disabled and disposed of, and no notice was taken of the extraordinary developments of this letter. Suppose the defendant had then informed General Townsend that for four years he had been receiving as "clean presents" one-half of all that Evans had paid Marsh, that it was a mistake that Evans had paid the whole sum to him, is it probable he would have remained in the War Office another year?

If, when the defendant was approached by Marsh or Evans, or both, with the intimation that he or his family could share in the sums to be paid by Evans to Marsh, in the language of the agreement, in consideration of his being appointed post-trader at Fort Sill, the defendant had shown Roman firmness and had said to them—

> Shall we contaminate our fingers with base bribes,
> Or sell the share of our large honors
> For so much trash as may be grasped thus,

this spectacle would have been spared to him and to us, and the country would have escaped a great scandal. But, as I have endeavored to show, he determined otherwise and basely betrayed the confidence reposed in him.

Mr. President and Senators, I have endeavored in an humble way to call your attention to the leading facts and considerations connected with the case. My aim has been to confine myself strictly to such discussion, and as far as I might be able to aid this court in arriving at a correct and proper determination of the case. I know there are many minor points to which I have not alluded for want of time. You will not overlook them in your deliberations. The result of such deliberations is anxiously looked for by the people. They are carefully watching to see if official crime can be surely, effectively, and lastingly punished. Not that official crime and peculation are more prevalent now than heretofore. On the contrary, the statistics show that the percentage of official delinquency and of loss upon the receipt and disbursement of public moneys is less now than in any other decade in our history.

Let me refer to one or two examples. Most of you will remember the defalcation of the postmaster in New York under Mr. Van Buren. Suppose Mr. James, the present postmaster in New York, should repeat the crime of Mr. Fowler, his predecessor. Does any one believe he would escape the most summary and condign punishment for his crime? Suppose Cabinet officers should again repeat the monstrous crimes perpetrated by some of the Cabinet under President Buchanan. Does any one believe they would escape punishment?

The public mind is in a ferment upon this question. The people will not brook any failure on the part of the tribunals charged with the enforcement of the Constitution and laws to discharge with firmness and impartiality their respective duties, to punish official delinquency and crime and by example to restrain the recurrence of such delinquency and crime in the future.

We ask, therefore, in the name of the people and on behalf of the House of Representatives that by the solemn judgment and decree of this high tribunal the brand of official infamy shall be placed upon the defendant, as provided by the Constitution he has violated, so indelibly as not only forever to debar him from holding any office of honor or profit, but which shall also serve as a warning and example to all others in like manner tempted to offend.

Mr. Manager LORD. Mr. JENKS will make the argument on the part of the managers.

The PRESIDENT *pro tempore*. Senators will please give attention.

Mr. Manager JENKS. Mr. President and Senators, having been called upon in the emergency of my colleague's sickness to supply his place, and to discuss the evidence with reference to the guilt or innocence of this defendant, I shall have to ask the indulgence of the Senate somewhat to remarks which are not fully as coherent as I should desire they should be. From the time I knew I was to address this Senate up till now I have not had time even fully to go over the evidence; but having participated somewhat in the preparation of that evidence it is possible I may with a good deal of accuracy state the facts of the case and submit the principles on which the question of guilt or innocence must ultimately be decided.

The question now before the Senate and which must be answered by each of you as a Senator and a judge in the case is, is this defendant guilty or is he not guilty? The question will be propounded to each Senator, and each of you must say whether he is guilty or not. Of what is he guilty, or of what not guilty, is the question each of you must ask himself on the propounding of that question, "What am I to say he is guilty of, or from what am I to exculpate him," is the question you will have to ask yourselves. There is no other question submitted to you at this time. Every element entering into the question of guilty or not guilty, it may be contended, must be answered in that simple answer of guilty or not guilty, and as a part of it, the counsel for the defendant say, you must answer the additional question "Have I a right to judge or have I not;" that is you must reanswer on the question of jurisdiction. I apprehend this is not so. But to enter into a discussion of that question would be trenching on that which has been assigned to other managers; but I may suggest, that if you have power to answer at all, you have power to answer the truth. When the question is asked you, is this man guilty or is he not guilty, if you have power to say he is not guilty, you have power to say he is guilty. A man never can be justified in telling that which is not true. It may be that it is a man's duty sometimes to say nothing, to tell nothing, and I apprehend there are some cases on earth when it is absolutely wrong to tell the truth; but it is never justifiable to tell a falsehood under any circumstances either in a court or elsewhere. So that when it comes to answering this question you should answer it upon your consciences whether he is guilty or not guilty, or not answer it at all. The question as to whether it is your duty to answer it at all after you have voted against jurisdiction has been treated pretty fully by one of the managers heretofore, and will receive further consideration from one of the managers in the future.

The question being is this defendant guilty or is he not, the first inquiry is on what are you to answer whether he is guilty or not. For this you go to the articles of impeachment, and we may say in brief that those articles of impeachment simply charge that he is guilty of bribery. That is the substance of the charge. There are none of the forms of an indictment at common law, because they are not required, nor would they even be permitted here; but in substance it is a charge of bribery; that is, is this defendant guilty of bribery or is he not? On that question of guilt or innocence the inquiry then would be, What is bribery?

Bribery had a definition at a very early period in the history of the law. In oriental countries where despotic rule existed, where the sovereign owed no duty to the subject unless he received some consideration for it, and he derived his title to his sovereignty by the divine right of kings, every suitor approached the judgment seat with a gift in order that he might command the attention of the one who was to judge his cause. But in modern jurisprudence where we recognize that the duty of allegiance has its correlative duty of protection and vindication, to approach the judgment seat with a bribe in the hand has been regarded as a crime. The Jewish law four thousand years ago delivered amid the thunders of Mount Sinai had established the principle as we now recognize it. To the rulers of Israel the command came:

> Thou shalt not wrest judgment; thou shalt not respect persons, neither take a gift: for a gift doth blind the eyes of the wise, and pervert the words of the righteous.—*Deuteronomy*: xvi, 19.

This was the rule with reference to bribery under the Mosaic law. A gift was the name it assumed, and a gift is the name that the honorable counsel [Mr. Blair] desires to give it here. I will not quarrel with him about names. He may call it a gift or call it what he pleases; but it was called a gift under the Mosaic law, and it was this that blindeth the eyes of the wise and perverteth the language of the righteous. At the common law the definition was more restricted. "Where a person concerned in the administration of justice taketh any undue reward to influence his behavior in office," was the definition given to the crime of bribery in Blackstone's Commentaries. By this definition it was restrained or restricted to the judicial office in Blackstone's time. But under the Constitution of the United States that definition is extended, and the Constitution provides that the President, the Vice-President, or any civil officer of the Government shall be removed from office upon conviction of bribery, showing that the crime of bribery was extended from the common-law signification to a broader signification, including at least all civil officers of the Government. Hence the present definition of bribery under the Constitution of the United States would be something like this: "Where a person concerned in the administration of government taketh any undue reward to influence his behavior in office."

Then the question you have to decide with reference to this man is, first, was he concerned in the administration of Government? Second, did he take any undue reward to influence his conduct in office? If the affirmative of these be established, the case is made out and he is found guilty; if the negative, he is not guilty.

However, there has been some little of discussion in this case which indicated that the defendant's counsel claimed that there must be a statutory crime in order to justify a conviction of the crime of bribery. We deny that ground and would say as a fact the Constitution itself says that bribery is a crime for which you can convict. But we need not stand upon that alone, because there are statutes which define the crime sufficiently, found on page 110 of the trial RECORD, which completely cover the case in all its essential particulars. The first of these sections I will read, excluding that which would have no relevancy to this case:

> Every member of Congress, or any officer or agent of the Government who, directly or indirectly, takes, receives, or agrees to receive any money, property, or other valuable consideration whatever * * * for giving any contract, office, or place to any person whomsoever, or for his attention to, services, action, vote, or decision on any question, matter, cause, or proceeding which may then be pending, or may by law or under the Constitution be brought before him in his official capacity, or in his place as such member of Congress, shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than two years and fined not more than $10,000.

This is section 1781 of the Revised Statutes, so much of it as is relevant to this case, excluding some verbiage that is not pertinent here. Then section 5501, reduced the same way, reads as follows:

> Every officer of the United States, * * * who asks, accepts, or receives any money * * * with intent to have his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may be by law brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be punished as described in the preceding section.

So that these two sections leave it substantially as the common law left it. No contract is necessary in advance concerning the bribe; there need not be any influencing of behavior at all. It is not necessary that his conduct should have been influenced, nor is it necessary that there shall have been any previous contract concerning this bribe; but if he took it, knowing it was intended to influence his behavior, or if he took it and his behavior was influenced, in either of these events he is guilty of bribery, and must be convicted of the crime.

Mr. BLACK. If he took it with intent that his behavior should be influenced.

Mr. Manager JENKS. The learned counsel suggests if he took it with intent that his behavior should be influenced, and I am thankful for the suggestion, for I feel very well assured in saying that is not the law. It is not whether he took it with the intent that his behavior should be influenced, but the intent is in the power of the opposite party. For instance, suppose a judge on the bench had a cause trying before him, and some one should approach him and say "Here, I will give you $1,000 if you will decide this cause in my favor;" the judge takes the bribe, takes the money, and makes up his own mind "Now, I will not decide this cause in a single particular different from what I would had that bribe not been paid to me." That intent would not exist in the judge's mind; he would not contemplate that his decision was to be influenced, but he would firmly resolve that it should not be; but in the case of Lord Bacon that very transaction occurred many times; a large number of times, I think, in the charges against Lord Bacon. The bribe was taken with the distinct intention in his mind not to be influenced, because he decided it against the party that gave him the bribe; but the British House of Lords said: "That is no defense; if you knew that was given to you as a bribe, no difference what your intent was in receiving it, you are a criminal." Will you fall below the justice of Great Britain two hundred and fifty years ago on this subject of purity or impurity? Will Great Britain in 1620 be more pure than the United States in 1876? If he took the money, and he knew or had reason to know that it was intended to influence his conduct, he is guilty of the crime of bribery, and you must convict him. So the honorable counsel's position is not true. It may have been his intent "I will not waver in my official duty one single scintilla;" but if he took it knowing it was intended to influence his action, he is guilty of the crime. That is all the answer we have to make to that suggestion of the learned counsel.

Then the inquiry is: First, was this man an officer of the Government? Second, did he take an undue reward? Third, was that undue reward intended to influence his conduct in his official behavior? These are the questions, and these are all you have to decide in the affirmative to find this man guilty.

First, was he an officer of the Government? That is an undisputed fact, and further discussion of it is unnecessary.

Second, did he take an undue reward? Of that there is no controversy. Mr. Marsh proves that seven payments were sent him by express. The different express agents prove that they went to his hands. Mr. Dodge, the delivery agent of the money, proves that he took his receipt for that money he delivered. It is proven by testimony indisputable, and not disputed I believe by the defendant's counsel, that that money came from Fort Sill, and that it was a part of the money paid by John S. Evans or Evans & Fisher. So that he was an officer of the United States and he took undue reward. There are five payments which are proven to have been paid by certificates of deposit on which his own name occurs. In addition to that, Mr. Marsh proves that he paid him from November, 1870, to January, 1876, regularly, quarterly, for the first year and half the sum of $1,500, and semi-annually for the remainder of the time $1,500. Mr. Evans says he paid over $43,000 to Mr. Marsh, and Mr. Marsh says the half of that was regularly paid to this defendant. Then we have these two facts fixed. He was an officer of the United States. He received undue reward indisputably. Then the remaining question is, was it to influence his behavior in office, or was it intended to influence his behavior in office or calculated to do it? There is some hiatus in the definition. The words "calculated" or "intended" must be supplied, but either one would make it the same thing. Then was this payment intended to influence his behavior in office? And on that the main question in the case depends, and as I understand it the main defense rests on the fact that it did not influence his behavior in office.

As I said before, it is not important whether it did influence it or not; but did he know or had he such means in his power as that a reasonable man would know that it was intended to influence his behavior in office? If he had, then he is guilty. The learned counsel at the opening of the case started out with saying that they had a complete defense on the merits, but it was extremely painful. I apprehend that was true. They had a defense, they thought, but it is not complete, and the second part I apprehend is true, that it was extremely painful. That arises from the fact that it must be a defense gotten up, not from the truth of the case, but from the ingenuity of the counsel; that is, the pleasures of conception and the pains of parturition had to be co-existent; and as the ingenuity of the counsel had to get it up and deliver themselves at the same time, this unnatural conjunction of conception and parturition coming together made it extremely painful, as it is contrary to the course of nature. Nature is ever true, ever consistent, and ever beautiful, and we must decide this on the truth rather than upon the ingenuity of the counsel. It is likely that if you were to decide upon the ingenuity or learning of the counsel, the defendant would have a good defense; but if you decide it upon the truth of the case it is quite a different matter.

Then they introduced—and one of the learned counsel said the whole *morale* of their defense depended on one of these questions—the evidence of John S. Evans, who swears he did not give this with any corrupt motive, or that he did not give it for the appointment, or something of that kind; that he did not have any previous contract or any previous arrangement, but he intended it simply as a gift, simply for good-will. That is the first defense. As I stated before, it required no previous contract, and learned counsel well know that. They know the law of bribery was laid down in Deuteronomy, wherein it says, "Thou shalt not take a gift;" so that the fact of this being a gift they well knew would not constitute a defense; but that was their whole *morale*.

Another defense was that it did not raise the price of provisions on the soldier or that it did not affect the price of Evans's goods one cent. That is the second ground. That is equally unimportant. It is no difference whether it had any effect or not; but if it was ac-

cepted with the knowledge that it was intended to influence his action, the crime is fully proven.

Then let us inquire concerning this fact; and in the inquiry into the facts of any case there is one principle in nature that is often run against by testimony which is either incoherent, or false, or manufactured for the occasion. That is, time in its course is of uniform rate, and extends in a straight line from the eternity of the past to the eternity of the future; and wherever a tortuous system of testimony is organized, it is always in danger of infringing on this uniformity of rate or this rectitude of line. So that in testing testimony and in testing intentions concerning this matter, this question of time may be considered, and the first place wherein this case collides with that is this: The testimony of Caleb P. Marsh on cross-examination is largely relied on by the defendant; and the learned counsel made the inquiry of Marsh, as found on page 178 of the trial RECORD, to which Marsh testified that the fact of this appointment arose from the friendship that existed between him and this Secretary of War; the friendship was the ground of the appointment; and that friendship, if you remember—and I can give you the page of the RECORD if any of you desire it, or if they controvert it—originated from the fact that Mr. Marsh had been very kind to the defendant's wife in her sickness.

First, the ground of the appointment was friendship; second, the friendship arose from kindness to the defendant's wife in time of sickness. Now, what are the facts? This runs against the rectitude of the line of time and its uniformity of rate. The defendant's wife, you will find in the testimony, was not sick until in September. In September his wife was sick, and the application of Marsh is made on the 16th of August.

How can that be? "It is a friendship in consequence of your kind attentions to my wife that originated this appointment;" and that sickness was in September; and yet on the 16th of August the following letter is written. I desire also to call your attention to the verbiage of the letter found on page 132, trial RECORD. Notice this letter. The letter is dated Tuesday, August 16, 1870:

No. 51 WEST THIRTY-FIFTH STREET,
Tuesday, August 16, 1870.

MY DEAR SIR: You will remember my application to you in Washington a few days since for an Indian tradership. Following your suggestion—

That is, following the suggestion of the Secretary of War—

I wrote to a friend in Kansas and yesterday received a reply. My friend advises me to apply for Fort Sill and Camp Supply. He says also that he is informed that the latter post is to be abandoned and the supplies concentrated at Fort Sill, but that you will know the facts in regard to this rumor; if true it will be only worth while to apply for the fort. The post was not mentioned by you as among those already promised, and I venture to hope has not been.

I write to you at once, so that in case it is yet free my application may be filed.

I shall send to Ohio immediately for the recommendations of Senator SHERMAN and Representative Stevenson, which I can secure without trouble, and as soon as received will send a formal application.

Prior to the 16th of August it seems that they had been in conversation, and it seems the Secretary of War had suggested to him, "Now, you find the best post, and you will find that by inquiry, and when you find this best post make your application and it will be all right." Yet they say it was in consequence of a friendship to his wife, occasioned by kindness in sickness in September. They must have been gifted with prescience to ascertain this kindness in advance, to arrange for the appointment on the basis of what did not exist. There had been a very casual acquaintance between the first Mrs. Belknap and Mr. Marsh before this, if they had known each other at all. His acquaintance with Mrs. Belknap was casual at any time. There was no evidence he had ever seen Mrs. Belknap at any time prior to this letter. In any event, his acquaintance was but casual, so that the allegation that the appointment was in consequence of the kindly feeling induced by the attention of Mr. Marsh to the Secretary's wife during sickness is simply a manufactured statement, and not true.

Here I may call attention to what may not be unimportant. That is that this defendant bears a good reputation as Secretary of War. What does a good reputation as Secretary of War imply and also a good reputation as a man? It implies that he is prompt in his attention to business; that he is faithful in his attention to business; that he is just in the discharge of his duties. If he was different from this it was out of his ordinary line of conduct; and if it was out of the ordinary line there must have been some strong motive; there must be a motive that diverts a man of rectitude, of principle, of prompt business habits, of systematic attention to all that concerns him, to make him unsystematic, to make him careless, or to make him unjust. If there is in this case that which shows you this defendant, whose habits were systematic, uniform, and just, was unsystematic, ununiform, and unjust, you must see there was some motive for this, and in the inquiry for that motive you come to nothing on earth but this bribe taken by the defendant. With reference to this, either this motive, which he says was the ground of action, the kindness to his wife, is not true, or else this letter was back-dated.

Mr. CARPENTER. You overlook the fact that there is a great difference in this country between applying for an office and getting it. He did not get the appointment until October—long after he applied for it.

Mr. Manager JENKS. The learned counsel has suggested very kindly, for which I am thankful, that he did not get this appointment until long after this, until some time in October. But what does this letter say? Does it not indicate and prove that there was some understanding that this man was to have a post and that he had got the suggestion from the Secretary of War to find out where the best post was? It seems to me that is what it means. If a man who is a truthful man tells that which is false, or if a man who is an officer makes a false entry, it is a pretty strong presumption that there is some motive for that false entry or that falsehood. This letter was written the 16th of August, 1870, and you will find by looking on the record it is marked as received on the 16th of August, 1870, here at the War Office apparently; and that it is marked "file" on the same day. That is, on the 16th of August, 1870, this letter is written; on the 16th of August, 1870, this letter is received; and on the same day it is marked "file." If that is false and it was not received on that day and was not filed on that day, if it is in the handwriting of the Secretary of War, it indicates that the Secretary of War in this case was not systematic, was not truthful, and perhaps was not just. We will come to this point again. Mind, he bears a good character, and it is exceptional if he is not truthful, faithful, and just. We say this letter was not received by the Secretary of War at the War Office on the 16th day of August, 1870. Let me tell you why. The Secretary of War, as proven by Mr. Crosby, left the War Office on the 12th day of August, 1870, and did not return until after the 7th day of September, 1870. How could he receive the letter on that day and mark it "filed" on that day in his office if there was not some motive for this false entry and this false filing? Look at Mr. Crosby's testimony, and you will find he swears that the Secretary left on the 12th day of August, 1870, and did not return until after the 7th day of September, 1870. Therefore, here is a false entry made in his own handwriting by a systematic, careful, prudent, just man. Is this no indication of guilt and that he had no motive for that except the friendship for his wife? Do you believe that? It requires more credulity than I can command to believe any such thing as that?

There is another fact. If you will notice you will see the application of John S. Evans was made on the 18th of August, 1870; that is, the application on which he was appointed. In order to make the transaction look decent of course Marsh's must be dated two days ahead, and hence one was made on the 16th and the other is on the 18th; and then the Secretary could say, "this post has been given out," as he did say to Mr. Evans when he applied. In this way the matter is all perfectly explicable, but it is utterly inexplicable from the theory of anything like innocence. So that here we say is a false entry, the very first thing that was done.

This is not all with reference to this case. If you go to the post-trader's book and look at that, as indicated in the record, you will find an additional fact, that Mr. Marsh appears to have been recommended, as written on the post-trader's book, by Job Stevenson and by Senator SHERMAN. If this man is a careful business man and systematic, of course there would be no false entries made there. As a fact Job Stevenson did not recommend this man until the 2d day of November, 1870, yet he appears as recommended by Job Stevenson. Senator SHERMAN did not recommend him at all. It is possible Senator SHERMAN might have recommended him by parol, but if he did, they could have easily proven it, because the Senator was here present, and they did not. There is nothing on the record to show he ever did recommend him. Hence we find there is all of this falsehood connected with the appointment itself.

Gentlemen, is this explicable on any other ground than that this man was acting out of the ordinary line of a good character. It can only be explained by the fact that "a gift blindeth the eyes of the wise and perverteth the words of the righteous." That is just what it was. Before that he went in a right line. Truth perhaps before that was his guide, but whenever he comes to take a bribe, then of course he is perverted from the right line, and the character that had been truthful and consistent before becomes blackened and degraded by falsehood. This is the state of facts in the appointment itself.

There is another system of facts to which I wish to call your attention. Mr. Evans testifies that there was an agreement or understanding between him and Mr. Marsh at the making of their contract on the 8th of October, 1870, that the military reservation was to be enlarged; and then the additional fact is proved that there was to be but one post-trader at each post. Those two facts were known by Mr. Marsh. How did he know them? They show that on the 7th of June, 1871, an order was issued that there should be but one post-trader at the post; but how could Mr. Marsh contract with this Mr. Evans and tell him, "You are to have the monopoly of this business, because there is to be but one post-trader at the post?" He had it by the prescience which he derived from the Secretary of War. It could have been known to no person else, because nobody but the Secretary of War could pronounce authoritatively that there was to be but one post-trader at the post.

Hence in the contract between Evans and Marsh, Marsh manifested a prescience which he could not have possessed or derived from any other source than the Secretary of War. But he had foreknowledge in another respect. He knew that reservation was to be extended in its limits. How could he know that? He could only know it from the Secretary of War. In 1868 you will find, by reference to a communication by General Pope, that there had been a recommendation to enlarge this reservation. That had lain until after this contract

was made. Is it likely that Mr. Marsh would have known that there was lying there among the archives of the War Office a recommendation by some commanding general in the West to enlarge this military reservation unless it was communicated to him by some person who had that knowledge, and whom did he associate with but the Secretary of War who had any such knowledge as that? It was from him and from him alone that he could have derived that information. Then how was it after the post had been let to Mr. Evans on the recommendation of Mr. Marsh? I want these facts exactly worked out. The counsel feel a great deal of comfort is to be derived from the fact that everything was done regularly through the military channels. If you look at the different communications on that subject you will find that in 1868 the recommendation was made to enlarge this military post, and that soon after this contract was made with Evans the first steps are taken to enlarge the post from what it had been.

Then we have this evidence from three witnesses. Mr. Fisher and Mr. Evans both swear that they wrote to Mr. Marsh concerning the enlargement of this military reservation, and Mr. Marsh swears that he sent the letters in every instance to Secretary Belknap. How could it be enlarged except through the military channels? The fact that the communication was made through the military authorities and that every thing was done through them is no evidence that there was no communication from Evans and Fisher to Marsh and from Marsh to Belknap; but the fact that Marsh could state that the reservation was to be enlarged and that it was enlarged so soon after this contract in obedience to requests made by John S. Evans indicates that that there was some secret understanding between these men, and that this man, who before had been righteous, had been perverted by the taking of a gift. Therefore their answer that this was through regular military channels is entirely insufficient in this case.

Then there is another fact which exists which they seem to think answers pretty largely to one branch of the case; that is, that the communication in regard to the selling of whisky on this reservation was first through the regular military channels. A sufficient answer to this is that all that must have been through regular military channels; but it does not follow from that fact that some person outside of the regular military channels did not expedite it. It does not follow from that fact that this man was not receiving $3,000 a year at all. John S. Evans swears, and so does Fisher, that they wrote to Marsh concerning that matter, and Mr. Marsh swears that he forwarded those letters to the Secretary of War, and then through the regular military channels comes the communication by which the reservation is enlarged. There is just the whole story. It is all consistent and all true. It was done through the military channels and it was inspired by the contract of Marsh and Evans and at the instance of Mr. Marsh directly to the Secretary of War. So there are no facts which they give in evidence that constitute any sufficient defense to the charges that the enlargement of the reservation and the right to sell whisky were quickened or inspired by letters from Marsh or by letters forwarded by him.

Then having considered, first, the circumstances of the appointment and shown that it was surrounded by falsehood, let us proceed a little further and see whether the Secretary has been diverted from the straight line of truth or not. If he has been thrown out of the straight line of truth you must find the motive for it. If he has acted differently from what an upright, intelligent man would act, you must find the motive; and that motive is easily found when you consider all the facts of the case, but is utterly inexplicable without all the facts of the case.

The next fact we will call your attention to is the article in the New York Tribune. This defendant was Secretary of War. If any wrong was being done under the control of the War Office it was his duty to right it. He was an intelligent Secretary of War and knew his duty; he was an upright man prior to this time and was only perverted by some strong motive. If he was perverted it must have been done from some other cause outside of mere carelessness and negligence, because he was a diligent and competent man prior to that time. It is their allegation and they prove it. Here is the New York Tribune. I will call your attention to the article especially. It is found on page 116 of the trial RECORD. It is dated the 16th day of February, 1872, and is as follows:

Army officers stationed at forts in the West complain of the extortions practiced by the post-traders—

"Extortions by the post-traders." They were under his control. He was a just man, if his character as proven be true—

and of the gross abuses practiced under the law which authorizes their appointment. These traders are given the exclusive privilege of selling goods upon the military reservations to the officers, soldiers, Indians and emigrants. The privilege is so valuable that it is obtained by political or family influence at Washington by men who never go to the posts or engage in the business, but farm out the privilege to actual traders for sums amounting in some cases to $10,000 or $12,000 a year. The traders occupy relations to the Army similar to those the sutlers held during the war, with this exception: that the sutlers were under control of the post-commanders, and the soldiers were protected against their rapacity by the power of a council of officers to fix a tariff of prices at which goods should be sold, whereas he traders are appointed by the Secretary of War.

Calling his attention to his power over them—

and having no competition—

Calling his attention to that infamous order by which he forbade having more than one post-trader at a post—

and being under no control—

Calling his attention to that order by which he denied the council of officers the right to control it—

charge any price they please. The sutlers were abolished at the close of the war, and the Commissary Department was required to furnish the necessary articles formerly kept by the sutlers and to sell them to the soldiers at cost price. This law the commissaries found irksome and they have always managed to evade it. Soon after it went into effect, the Adjutant-General issued an order allowing any one to trade at a military post who should show fitness to the department commander. This was a good arrangement for the troops, for it gave them the advantage of competition; but it did not suit the traders, who have always sought exclusive privileges. It lasted until the summer of 1870, when, on the recommendation of the Secretary of War, a section was put into the Army bill authorizing the Secretary to appoint one or more traders at each military post "for the convenience of emigrants, freighters, and other citizens." The section was plausibly worded and passed without objection. Under it the Secretary appoints but one trader at each post, and refuses to appoint more, so that this single trader, having a monopoly of all the business, plunders the officers and men by charging them outrageous prices. There is no escape from his rapacity, because the officers have no control over him as they had over the sutler. There is good authority for stating that traders' privileges are systematically farmed out by those who obtain them from the War Department. The Secretary is not charged with being cognizant of these practices, and probably has not been informed of them. One of the most outrageous cases of the kind is described in the following letter from an officer stationed at Fort Sill, Indian Territory:

"I have incidentally learned that you have a desire to know whether a bonus is required from the traders here for the privilege of trading, and have been urged to write you the facts in the case. As there seems to be no secret made of the matter and as, in common with all others here, I feel it to be a great wrong I think you will readily excuse the presumption which my writing unasked by you might indicate. I have read the contract between J. S. Evans, a Fort Sill trader, and C. P. or C. E. Marsh, of 1867 or 1870, Broadway, New York, office of Herter Brothers, whereby J. S. Evans is required to pay said C. P. or C. E. Marsh the sum of $12,000 per year, quarterly in advance, for the exclusive privilege of trading on this military reservation. I am correctly informed that said sum has been paid since soon after the new law went in force, and is now paid, to include some time in February next. This is not an isolated case. I am informed by officers who were stationed at Camp Supply that Lee & Reynolds paid $10,000 outright for the same exclusive privilege there. Other cases are talked of, but not corroborated to me; sufficient to state, the tax here amounts to near $40 per selling day, which must necessarily be paid almost entirely by the command, and you can readily see that prices of such goods as we are compelled to buy must be grievously augmented thereby. It not being a revenue for the Government and Mr. Marsh being an entire stranger to every one at the post, it is felt by every one informed of the facts to be, as I said before, a very great wrong."

There is a substantial history of the facts of this case communicated in the New York Tribune. Mr. Crosby proves that this article was read by this defendant. Then had he guilty knowledge? If he had guilty knowledge and had it in his power to remove this man that was thus black-mailing this sutler or the soldiers, whichever you please to call it, (because it is no less a crime to black-mail the sutler than it would be the soldier,) he should have removed him; but if after that he continues to receive from this man that is thus black-mailing the sutler or the soldiers, whichever you please to say, money to the extent of the one-half of $12,050 per year, is he not guilty? Does not that guilt influence his behavior in office? Then what course did the Secretary of War take? He begins in conformity to the instincts of a good officer. He had been a man of good character. He had been a Secretary of War who was prompt, diligent, and faithful. He read this article of the 16th of February, 1872, and on the 17th of February, 1872, he issues the order which I will read. For a time perhaps he said, "I will cease to receive this filthy gain, and I will recover the integrity which my prior character has indicated. I will cease to participate in black-mailing either this sutler or these soldiers, and I will stop this abuse." That was the instinct of his nature; but little by little the greed of gain ate into this pure instinct and made him a corrupted mass, which for years and years went on festering till it left him the poor creature he is now. In conformity to the instincts of his nature on the 17th of February, 1872, he makes the following order:

WAR DEPARTMENT,
Washington City, February 17, 1872.

The commanding officer at Fort Sill will report at once, directly to the Adjutant-General of the Army, for the information of the Secretary of War—

Just observe how completely this order covers the case—

as to the business character and standing of J. S. Evans, post-trader at that post, whether his prices for goods are exorbitant and unreasonable, or whether his goods are sold at a fair profit; whether the prices charged now and since his appointment to that position by the Secretary of War, under the act of July 15, 1870, are higher than those charged by him prior to that appointment, when he was trader under previous appointment; whether he has taken advantage of the fact that he is sole trader at that post to oppress purchasers by exorbitant prices; whether he charges higher prices to enlisted men than to officers; and whether he has complied with the requirements of the circular of the Adjutant-General's Office issued June 7, 1871.

The commanding officer is expected to make as full and as prompt report as is possible.

Then on reading that article, charging all this wrong and fraud, he issues an order asking for information from an official source. In obedience to that order he gets a response, after he had made that inquiry, and in the inquiry had failed to inquire of the fact that he himself knew, whether this Evans was paying the money to Marsh. He did not need to inquire for that fact because he knew it; but his instinct at that time probably was, "We will stop that. I have done enough for this kindness to my wife," (which did not occur till September, when he had substantially appointed Marsh in August.) That was probably the instinct which inspired that act. He did not ask the post-commander whether this was true or not; but he asked for these facts generally and received a response. This is the response, dated February 28, 1872:

I have the honor to acknowledge the receipt of your letter dated February 17, 1872, relative to the post-trader at this post.

I understand J. S. Evans's character as a business man is good, and he has heretofore given general satisfaction.

Good testimony to the character of Evans; good testimony to the character of the man whom he was going to supersede and make lose eighty or one hundred thousand dollars for a mere friendship to a man who really did not know that he had ever seen him before September!

But Mr. Evans is absent, and has been for some months, and has associated with him J. J. Fisher, now also absent, who has had control of the establishment and who claims to have the greater pecuniary interest in the business, (the business being conducted, however, under the name of J. S. Evans.) Repeated complaints have been made to me of the exorbitant prices at which goods were sold by them, and when I have represented the matter to the firm they replied that they were obliged to pay $12,000 yearly (to a Mr. Marsh, of New York City, who they represent was first appointed post-trader by the Secretary of War) for their permit to trade, and necessarily had to charge high prices for their goods on that account. I have repeatedly urged them to represent this matter in writing to me, in order that I might lay the matter before the proper authority to relieve the command of this burden, upon whom it evidently falls; but they declined to do so, stating that they feared their permit to trade would be taken from them.

As the prices could not be regulated by a council of administration, the trader not being a sutler, it has been contemplated by some of the officers of the garrison to represent this matter, without reference to J. S. Evans, through the proper military channels, but as it was claimed that the authority for the tradership emanated from the Secretary of War it was feared that that course might be construed as taking exception to the action of superior authority.

The prices are considerably higher since his appointment by the Secretary of War than previously—

The prices are higher it seems—

and he has undoubtedly taken advantage of his position as sole trader in charging these exorbitant prices, giving the reasons above quoted, stating that he could not, under the circumstances, sell goods at lower prices.

It has also been reported to me that he charges enlisted men greater prices for the same articles than he does officers, and, at all events, it is very evident that the officers and men of this garrison have to pay most of the $12,000 yearly, referred to above, they being the consumers of the largest portion of the stores.

I feel that a great wrong has been done to this command in being obliged to pay this enormous amount of money under any circumstances; the largest portion of which, at least, has been taken from the officers and enlisted men of this post, nearly *all* the money of the latter mentioned going to the trader. The responsible party for this great injustice should be *held* responsible and be obliged to refund the money.

If J. S. Evans has not paid—

Notice the sentiments of this officer of the Army on this subject, what he thinks of this matter; and we are to suppose if this man has the good character which he had before he would be of the same opinion:

If J. S. Evans has *not* paid this exorbitant price for permission to trade as stated by him, his goods should be seized and sold for the benefit of the post fund.

In order to insure a healthy competition, to reduce the price of goods, and to relieve the officers and soldiers of this garrison from this imposition, I recommend that at least three (3) traders be appointed, and that those appointments be made upon the recommendation of the officers of the post; that each trader be *known* to be interested only in his own house, and that they be obliged to keep such articles as are required for the use of officers and enlisted men of the Army, and to sell them at moderate prices.

The trader complies with circular of A. G. O. issued June 7, 1871, as far as I am aware.

The buildings, (store, &c.,) however, are not convenient to the present garrison, having been built at the time when the command was in camp.

Here is the answer he gets to the communication of the Secretary of War of the 17th. On the 28th of February he gets a response, an official response, from an officer of the Army in command, who speaks upon his honor as an officer, telling him, first, that every one of these outrages exists. This officer tells him that this man Marsh pays $12,000. He tells him that the payment of that $12,000 is urged by Evans as a reason for the extortionate price of goods. He states that he cannot sell goods any cheaper because he is paying this $12,000. He tells him further that he sells more dearly to enlisted men than he does to officers. He tells of many outrages in this letter; and what is the result?

Mr. OGLESBY. Who is that letter signed by?

Mr. Manager JENKS. It is signed "B. H. Grierson, Colonel Tenth Cavalry, commanding."

Mr. SARGENT. On what page?

Mr. Manager JENKS. It is found on page 144. It is in answer to the command of the Secretary to report these facts. First, the Secretary reads the Tribune article of the 16th of February. On the 17th he commands General Grierson, his subordinate, to give him a truthful report on these facts; and on the 28th of February that report over the signature of B. H. Grierson comes to his hand, and he knows every fact in it from official authority upon the honor of an officer of the Army.

Mr. CARPENTER. It was dated that date, but was not received until the 9th of March.

Mr. Manager JENKS. The counsel corrects me. It was not received until the 9th of March, but it was dated the 28th of February. I have given the dates in each instance of these orders, not the date of reception. Then on the 9th of March he knew every one of these facts. It is not at all important for the trial of this case so far as this matter is concerned that these statements of General Grierson are true. The learned counsel called John S. Evans, and he swears he did not charge a cent more for those goods after this than he did before, but on the contrary has reduced the price; but what difference should that make in the action of the Secretary of War, as he did not know this fact alleged by Evans till this trial? But he had gotten an official communication which he was bound to believe of the fact that soldiers were charged more than officers, that $12,000 of tribute was levied off the soldiers and officers of the Army through this tribute paid to Marsh. He knew that officially, and what did he do to remedy it? The learned counsel say that he got General McDowell to issue an order by which all that was remedied. What is the fact with reference to that order? General McDowell had seen the article in the New York Tribune. This report from General Grierson came to the hands of the Secretary of War on the 9th day of March. About the 25th of March, about sixteen days after the Secretary of War had gotten this report from General Grierson, General McDowell came to him and called his attention to the article in the New York Tribune. The Secretary of War says, "Sit down, general, and write me an order to meet the difficulties mentioned in that article." Why did not he say, "Sit down, general, and write me an order to meet the difficulties mentioned in this report of General Grierson? There is the best information I have." If this man was honest, intelligent, and diligent before, was he honest, intelligent, or diligent in this business? If he was not, what was his motive for being otherwise? It was $6,000 a year. That was the motive. If he had been honest, diligent, and truthful, as he was before this transaction, would he not immediately have laid before General McDowell the truth of the case and said, "General, here is a report from Colonel Grierson, commanding at Fort Sill, stating that Marsh is black-mailing the trader there, stating that the soldiers are paying more than they did before that black-mailing, stating that the enlisted men are paying more than the officers, requesting that there shall be more than one trader at every post, and suggesting certain modes of correction?" Why did he not lay that before General McDowell? Because he had a motive. He had a motive, deep, profound, and damning, such as precluded his telling the truth to General McDowell. General McDowell's order then was drawn simply on the information in the article in the New York Tribune, whereas this defendant had in his breast other knowledge than that.

But his guilt does not stop here. It is not only crimes of malfeasance he is guilty of. If he was a faithful, diligent, and competent Secretary of War he would not forget so important a communication as that when he is asking an order to rectify the wrongs; but he absolutely in this instance, I am sorry to say, told a simple falsehood. To sustain this assertion I will give the testimony of General McDowell from the RECORD, because I feel sorry, and sincerely sorry, to see a man whose opportunities in life were so brilliant as this man's, whose standing in his country had been to it an honor, whose opportunities for good had been so eminent and glorious, sink so deep as this crime sinks this poor, unfortunate man. Hence we will read to you the answer of General McDowell. The Secretary did not only not lay before him this official information, but he really told General McDowell that he had appointed Mr. Marsh and Mr. Marsh was the trader. We will find that on page 126 of the trial RECORD:

Q. (By Mr. CARPENTER.) I ask you, General, whether on reflection and after looking at that article you think you were or were not mistaken in saying that you supposed that Marsh was the post-trader at the time you had your interview with the Secretary of War?

A. I can hardly say what particular relations Marsh or Evans had with this matter. The Secretary told me he had appointed Marsh, and I supposed he had received the office.

Therefore the Secretary not only was guilty of the malfeasance of not reading the letter of General Grierson to this man from whom he asked the order to be written, who was to rectify this wrong, but the Secretary absolutely told him that he had appointed Marsh and he supposed he had received the office.

Whether he had transferred it, or assigned it, or sublet it, or farmed it out, or what relations he had with it was not, in my mind, a very special question What I wanted to do was to correct an abuse; but whether the form was that Marsh was the trader or the other man was the trader was not so much in my mind as to discuss the question that was then up.

Then on page 127:

Mr. Manager MCMAHON. * * * Was it in that conversation that he said he had appointed Marsh or offered the appointment to Marsh.

The WITNESS. It was on that occasion. I had several conversations; I cannot state whether this was the first time I saw him or subsequently.

So that he not only withheld, but he absolutely misled in order to get that order written that it should not cover the case. Bearing this fact all the time in mind that prior to this he had known his duty, here was a full statement of the abuse laid before him, that he had made requisition for information from the official source touching this abuse, and that he had gotten full and complete information, then he calls on an officer of the Army and withholds his official information, to correct this abuse recited in that report, the only official information that he had on which to do it, and permits an order to be drawn which in no way touches the abuse, and holds out to the person who drew that order the impression that Marsh was the trader and not Evans; and General McDowell says the Secretary of War told him Marsh was the trader. Can you account for this divergence from the right line of a man of character on any other basis than that there was a powerful motive inducing him; and what motive does the defendant assign? Friendship in consequence of attentions to his wife, whereas this appointment was substantially made before Marsh appears to have ever known his wife, so far as there is any evidence in this case. So that here is falsehood put upon falsehood to screen this wrong. I sincerely hope the first in his life and I sincerely hope it will be the last.

Mr. BLACK. Are you sure of that?

Mr. Manager JENKS. The learned counsel asks me whether I am sure of that. I am only sure of it from the facts of the case, and in

that letter of the 16th of August there had been suggestions for him to find the best post, and on the 16th of August he writes the Secretary of War, and that is filed as his application, and we assume that an application is the basis of an appointment, particularly if that application is prior in time and acted upon officially. So the official application on which this was based is made prior to any acquaintance with his wife at all, so far as we have any information in this case. Then we have this additional fact, that he told Evans that he had promised it to Marsh. That was prior to the appointment, and there is no evidence of any communication between him and Marsh subsequent to that. Taking these two transactions together it seems to me that the appointment was made in substance before ever there was any obligation existing from the Secretary to Mr. Marsh at all. But even if he were appointed on the basis of friendship, how quickly that friendship had ripened into fruition. He never knew him at all except for a little while in New York. Some attention was paid to his wife; and yet here is a friendship that ripened into full fruition to such an extent that an officer of the Government of the United States would remove John S. Evans, who comes there with unquestionable vouchers, everything right in his record, every officer at the post asking that he shall be appointed; who comes there representing that he will lose eighty to a hundred thousand dollars if he is removed, and the Secretary says you may lose that because I love this man so! Do you believe such absurdity as that? And if you do believe it, is it not a crime? The fact that an officer of the United States to gratify a mere private friendship will override the recommendations of all those who have a right to speak, will exercise the tyranny of destroying a private fortune of eighty or one hundred thousand dollars to gratify his own love to a friend, is this no evidence of crime in a case of this kind when the Secretary is constantly accepting money from that friend? Put it in any light you please, how does this defendant stand?

Mr. CARPENTER. Will the counsel permit me to interrupt him to correct a mistake in his statement of the testimony?

Mr. Manager JENKS. With pleasure. If I have made any mistake I hope my attention will be called to it, because I have not had time to go over the testimony fully.

Mr. CARPENTER The manager's theory is that General McDowell drew this order under a false impression that Marsh was the real trader and not Evans. The subsequent portion of General McDowell's examination, I think, shows that his former examination in that respect was a mistake. In the first place, the Tribune article, which was the basis of McDowell's action, stated that Evans was the trader and was paying Marsh for the privilege of having the appointment. In the next place, on page 127, to the question put by Mr. Manager McMAHON, he says:

Question. If you had known that the actual state of circumstances at Fort Sill was that Evans was really the post-trader, that Marsh had no capital in it, and that Evans was paying $12,000 a year simply for the privilege of holding it——

Answer. That was about what I understood to be the case.

Q. (By Mr. Manager McMAHON.) Did you draw that order for the purpose of correcting that?

A. Yes.

Recross-examined by Mr. CARPENTER:

Q. Would not that order have corrected it if it had been executed?

A. I have said two or three times that I thought it would.

That shows that General McDowell was not under a mistake as to who was post-trader at the time that conversation took place.

Mr. Manager JENKS. Senators, all I have to say is just read the whole testimony of McDowell through and see whether he did not draw that order under the impression that Marsh was the post-trader. In two different places in his testimony it occurs that the Secretary of War told him so, and he says in another place that he does not know what order he would have drawn if he had known that state of facts. So take the whole testimony—it makes no difference really whether he supposed Marsh was or was not—the part that we say was wrong is that this Secretary has endeavored to create a false impression by misleading and misstating. When he asked for an intelligent order he should have laid the report of General Grierson before General McDowell; he should not have said "I appointed Evans;" the attempt to mislead we complain of, not that his statement did mislead. It is not whether the order did correct it or did not, but what was the information General McDowell had, what was it the duty of the Secretary to give? It was his duty to give General McDowell the truth.

Mr. CARPENTER. He swears positively that when he drew the order he understood Evans was the trader and was paying $12,000 to Marsh.

Mr. Manager McMAHON. A little further on that is denied substantially by him at the bottom of page 127.

Mr. Manager JENKS. But that does not affect the fact that he told General McDowell he had appointed Marsh. But I read from page 127:

Question. In this matter I want this distinctly understood: Whom did you and General Belknap in your conversation there together understand to be the post-trader at Fort Sill?

Answer. I do not know what General Belknap understood, and as to myself I did not think much about the matter. I merely wanted to correct an abuse; I merely wanted to state a scandal; and I took what I thought the quickest and best and directest way to do it, and that will be seen in the order which I drew up.

Q. If you had known that the grievance that existed there was the payment by Evans, who was actually post-trader, of $12,000 a year to Marsh, who had no capital invested in the concern—I put the question to you in answer to the hypothetical question put on the other side—would you not have drawn a different order from the one you did draw?

A. I can hardly say what I would have done if things had been different.

So he states that the Secretary of War told him Marsh was the post-trader, and his order——

Mr. CARPENTER. To settle that question, there is the article in the Tribune which set them all in motion, which charges distinctly that Evans was the trader, that he was paying Marsh $12,000 for having gotten him his appointment. That, therefore, was the abuse McDowell wanted to correct.

Mr. Manager JENKS. Let me go on.

Mr. CARPENTER. I suppose you do not want to misrepresent the testimony.

Mr. Manager JENKS. I am not misrepresenting the testimony one iota. I have read that article from the Tribune, and I have read just what it is literally. So that the facts were before General McDowell, we say, just as stated in the Tribune article; and I say it probably would not have made any difference whether Marsh was the post-trader or not. But the fact remains the Secretary told General McDowell he had appointed Marsh.

Mr. CARPENTER. Then what is the point?

Mr. Manager JENKS. The point is this: that when the Secretary of War had an official communication in answer to an official communication requiring that information, from General Grierson, giving the full details of the facts and stating that this man Evans levied that black-mail off the soldiers, and that he charged enlisted men more than officers, and all the abuses existing under that, he did not lay that information before but withheld the official information from General McDowell and allowed him to draw an order on simply the information contained in the article in the New York Tribune, and then added to that by saying that he had appointed Marsh. That is wherein I complain of him. It is not whether McDowell thought this, or thought that, or thought the other; but it is that this Secretary of War did not give him information by which he could correct that abuse, and even went further, that he absolutely misled, or attempted to mislead, General McDowell from the truth of the case.

Then the order of General McDowell is found on page 119 of the RECORD. That order I will not read, but will give simply the page on which it is found. It corrects no abuse concerning this $12,000 a year.

Mr. CARPENTER. Will the counsel allow me one further correction? I understand there is not a particle of truth here to show that that Grierson letter was not before McDowell. McDowell does not swear that he did not see the letter; nobody has sworn that it was suppressed. You are charging us here with a positive act, the suppression of a letter, and charging us, as I understand, without a particle of testimony.

Mr. Manager JENKS. I am simply charging you with what General McDowell says. He says he drew the order on the information in the New York Tribune, and never speaks of the Grierson communication having been laid before him. It would have been an item of defense if you had shown that you had laid the Grierson communication before General McDowell. Would he not have drawn a different order?

Mr. CARPENTER. He says he would not.

Mr. Manager JENKS. You never asked him what he would have drawn if the Grierson letter had been before him. But the Grierson letter was before the Secretary of War, and if it had been before McDowell why did you not ask General McDowell that question? We do not have to prove that a thing was not so; we do not have to prove a negative; it was for the defendant to prove affirmatively that it was before him. But if you look at the McDowell testimony, you will find that he testifies that he drew it from the Tribune article and to correct the abuse therein stated, and he does not take a single step to correct the abuses stated by Grierson's report, showing that that was not before him.

Mr. CARPENTER. There is not a thing in the Grierson letter that is not in the Tribune article, as I understand it.

Mr. Manager JENKS. The Tribune article and the Grierson communication are before the Senate. They can judge for themselves as to that, and judge whether a man whose character is in a right line and who knows his duty, and does not lay the information before the officer from whom he asks the performance of a corrective duty, is doing right or doing wrong.

Having thus shown that the appointment of this man was out of the ordinary course, and that the conduct of the Secretary of War was different from what it should have been in the ordinary course, the next inquiry is, what did he do when he got this money? Was there anything done to indicate that it was corrupt? Was there any concealment connected with it, or was it open and frank? But before we go to the consideration of that I wish to impress this fact: When this report came from General Grierson stating as he did that the extortion of $12,000 a year from these soldiers existed, and charging that the enlisted men paid greater prices than their officers, what would be the conduct of a Secretary of War of good character? What would he do? When he found a post-trader was doing all these things, what would he do? Would he not remove him just as quickly as he could write the order of removal? How did it affect the President of the United States when it came to his knowledge? He re-

moved him immediately. Why did the Secretary not remove him immediately? He had a motive, and that motive was $6,000 or $3,000 a year. Before that his instincts were just as refined as the President's; before that he bore a good character. He knew what he ought to have done. He ought to have protected these enlisted men. The defendant will say Evans did not charge them any more than he did before; but that information he did not have until we came to this trial. Here is this letter which he had on the 9th of March, and it was official, on the honor of a soldier, and the only information he had showing that every one of these abuses existed, and he did not remove the man nor do a single act to obviate this wrong. There must have been a motive, and that motive is perfectly apparent when the last part of the case comes out that he got $3,000 a year from this post for the last three and a half years and $6,000 a year for the preceding year and a half.

Then, is there anything in the receiving of the money itself which indicates that he knew he was guilty of a crime? In the inquiry for truth with reference to criminals, we always start upon this hypothesis, that truth loves the light and crime the darkness. Crime always enshrowds itself either in the darkness of physical nature or in the moral darkness of falsehood. Where we find falsehood, we expect crime. Where we find darkness, we expect the deeds of darkness; but where it is truth, its beauty loves to shine in the bright sunlight, and we expect everything to be conducted fairly and openly.

Now, with reference to the receiving of this money, what is the conduct of Marsh? Every letter that he gets he destroys. Why does he do this? Because those letters if preserved would be evidence of crime. That would be the natural answer. But suppose you take some other answer, that Marsh is a careless man; that answer will not apply to this defendant, because he is a systematic man; he preserves his correspondence. Marsh swears that every time he sent him a remittance he wrote him a letter. Every remittance had a letter sent with it, or prior to its sending, and he received an order from this defendant as to the mode of sending the money. Then we find that he kept a private secretary and a letter-book, and had a memorandum made of every letter; why is every single letter for thirteen different transmissions of money entirely missing? It looks like the concealment of fraud. It looks as though he did not intend this matter ever to come to light. Marsh may have allowed his letters to stray from mere negligence; but that every one should stray, every one be destroyed in his instance, was rather singular; but that the conduct of the Secretary of War should precisely coincide with his seems to be a most transcendent coincidence of negligence. How can you explain this? "The fact is, there never were any letters," the learned counsel [Mr. CARPENTER] suggests; but the witness swore there were. Which do you take? The learned counsel says there were no letters except this one, except official letters. We sent to the War Office and got all the papers relating to Fort Sill, and not a single letter concerning the transmission of any money appears there. Then they were not official letters, and the theory of the counsel is not true. He says there were no letters at all; but the witness swears that before every remittance he made he sent a letter substantially in form, "I have a remittance for you from the S. W." There is not a single one of all these. Mr. Evans swears that he always wrote to Mr. Marsh for any favors he got, and Mr. Fisher swears to the same, and Mr. Marsh swears that he always transmitted those letters to the Secretary of War, and they are not here. Why is it that every single letter connected with this transaction is destroyed if it were an honest, *bona fide* transaction, as they claim it was? It may do for counsel to say "There were no letters but this one;" but the evidence is the contrary, and it is the truth we want, it is not the mere assumption of assurance, but simple truth, and the testimony at that. So we say here the destruction of these letters is a pregnant fact in favor of his knowledge that this was intended to influence his official conduct, and we have already shown, we claim, that it did influence his official conduct, in that he acted differently in this transaction from what any honest officer ever would in any other.

There is another peculiarity. Did you ever know a man on earth who received, say, $1,500 from another who never asked, "What is this for, how do I come to get this?" Yet here are thirteen different payments of $1,500 each coming to this man straight along and he never asks "What is this for?" Very often there is just as much in what a man does not do as in what he does do. If a man should go to one of you and hand you $1,500, as a man of honor would you not ask him the very first question, "Why do you give me that," and if he should come three months after and give you $1,500 again, would you not ask, "Why is this?" If you got a letter from him, "Here is a remittance from the S. W." you would say, "What do you mean by sending me remittances from the S. W.?" Would you take the receipt and write on the back "O. K." and return it without a word of comment or inquiry? I apprehend there is not one man in this body who would ever act on such a system as that. You could not and you would not receive thirteen different payments of $1,500 on such significant communications as that and never once ask what they meant. How preposterous it is for men of sense to ask the Senate of the United States to assume that this man was not concealing something, and if he was concealing something what was he concealing? Simply bribery, simply crime. It takes more credulity than any one should ask of a human being to believe that this man was not holding back something, was not concealing something.

But another fact. After the Tribune article the Secretary of War says to Mr. Marsh, and the only communication we find between them apparently, "Have you a contract with Evans?" "Yes," says Marsh, "I have a contract." Then the whole conversation ceases. "I have a contract." There is all the communication there was between them apparently in reference to this matter. He did not ask anything more about it; but his counsel, [Mr. Blair,] with that confidence in the statement of his client which has characterized him all through, says he thought there was a partnership. He was getting $1,500 quarterly from Marsh for this same transaction. Would he not think there was a partnership with him, too; and if the partnership was with him, too, he getting the half of the profits, was it not bribery? It needs no precontract for bribery; it needs no statement, "Here, I am handing you a bribe." The best evidence in the world that the thing was not a bribe would be such a statement as that. But it is the gift, and according to Holy Writ, "Thou shalt not take a gift." Bribery always assumes the form of a gift, and it is a gift that blinds the eyes of even the wise, and how fearfully blind was this defendant. It always has been known as a gift and always will be known as that. So that here this man has only taken a gift, and yet see how eccentric his conduct. If I get an honest gift I feel like proclaiming it to the world; I say "My friend has done me this kindness, given me this gift;" I am proud to proclaim his generosity and love. But if a man should come and give me thirteen of these gifts in succession, in the shape of quarterly and semi-annual payments, and I was doing a wrong in office with reference to that matter, I should hate to ask any questions about it and would be equally reticent in regard to answering any.

Then can you, Senators, in any way account for this, or any portion of this conduct, on the theory of this defendant's innocence? If you can I am glad to see you do so, because I have no feeling of unkindness for the man.

But there is another system of facts connected with this case. In the first instance these transmissions were made in the shape of express packages from C. P. Marsh, but after this New York Tribune article it then becomes more complicated and gets to be R. G. Carey & Co. There is but one payment ever transmitted in the name of C. P. Marsh after the time of the New York Tribune article. Why? Because "this transaction is becoming a little noted, and the name of Marsh does not sound well in connection with the Secretary's and we will call it 'R. G. Carey & Co.;'" and yet this Secretary receives it from R. G. Carey & Co. and never asks anything about it. Is not that singular?

One of the payments he sends West is invested by Mr. Emery in Illinois. That is in his own name until 1874, before the Tribune article, and then after the newspaper notoriety it becomes the wife's. That is another circumstance that would indicate that there must be some cause for this change. "It is coming toward publicity, and the Secretary says I must shape my facts to suit the scandal if it does come out." That was the order of this transaction.

Then, again, we find on the 22d day of November, 1875, when a democratic Congress is likely to come in, he makes a report in which he recommends a repeal of this whole law, showing, as he reasoned in his own mind, "I do not wish this thing inquired into; I am opposed to this law." He wanted to make the people believe that he had no interest in the law. He never thought of that until the 22d of November, 1875; and yet here was Grierson's letter in 1871, and here was the constant complaint from 1871 to 1875; but it took him four or five years to find out that the law was a wrong and a fraud, and that discovery was only made at a time when there was great danger of this thing leaking out; another reason for this recommendation of November, 1875. On March 14, 1875, there had been an officer by the name of George Robinson who had been court-martialed, and the charges against Robinson, as appears in the letter of Mr. Robinson to the Secretary, were that he did not pay his debts to this post-trader. He was court-martialed, and a sentence of dismissal from the Army had been passed against him in consequence of his being in debt to the post-trader.

Mr. CARPENTER. I want to correct the manager. He was cashiered for drawing his pay over and over and over again. That is what he was charged with and convicted of.

Mr. Manager JENKS. There is not a word of evidence of that, and I will show the evidence to the contrary.

Mr. CARPENTER. That is the record. Do you not call that evidence?

Mr. Manager JENKS. All the record that is before us I will read to you. I do not know the facts outside of this case, but the facts inside are those on which I expect to try it. Look at the letter of George T. Robinson on page 150 of the trial RECORD. That letter gives the ground of this dismissal. He says:

> I have thought that you, sir, should know these facts before I brought them to your official notice by sending the charges to you through all of the official channels, and to ask your advice as to the best and most expeditious manner of bringing these men to justice. Every man and officer of these regiments have been most outrageously swindled by this firm, as I have abundant testimony to prove. If I leave the Army by sentence of the general court-martial that has just tried me, it is by getting into unavoidable debt to these men, who, after getting all the money I had, now seek to ruin me, knowing that I alone am in possession of all the facts in the case against them.

There is all the information I have on that subject, and I apprehend it is about all the information you have, gentlemen; and it is the testimony in the case on which we must try it.

Mr. CARPENTER. It is false from beginning to end.

Mr. Manager JENKS. I have the counsel's word for that; but I give you the testimony in the case as given in, and they gave it themselves; and if they were not satisfied with it, they should not have given it. That is all I can say to them. The learned counsel may deny it and he may say it is not the truth, and it may be that it is not the truth; it may be that every word George T. Robinson stated was false; but I cannot go outside of the case into the imagination of the counsel to find anything else than what is in the evidence; and the evidence is that he was dismissed for getting in debt to these men and not paying them, and was dismissed the service on that account, and they have given no evidence to the contrary; and standing on that, here comes a complaint of this man in March directed to the Secretary. The learned counsel says it is a black-mailing letter.

Mr. CARPENTER. Will the manager allow us to present to him for his private inspection the record in the case which shows——

Mr. Manager JENKS. After I am done with the case.

Mr. CARPENTER. The manager does not wish to convict us on a falsehood.

Mr. Manager JENKS. On the evidence in this case or nothing.

Mr. CARPENTER. That is a falsehood you are now trying to convict us on.

Mr. Manager JENKS. Whether it is falsehood or truth it is your evidence, and I do not know anything more; but if I have to go to them and ask them what the facts are independently of the evidence in the case, I do not know what we should prove. I know we should prove some things that are not true if we take our facts from them, because we think the evidence has established some things contrary to their statement, and very materially so. I have already stated that this letter was introduced by the defendant. All the information I have—and I do not say it is either false or true, but it is all the evidence we have on the subject—is that this man Robinson was cashiered from the service in consequence of his having fallen in debt to these men and not paying his debts. I believe it is a crime in the Army for a man to go in debt and not pay. For that he was cashiered. He applies to the Secretary of War and says, "There are slanders against you in reference to this matter; you are in danger of being wronged by these men no less than I, and I now will give you all the information. All I have is my commission in the Army. All I can hope is from performing my duties as an officer of the Army. The only wrong I have ever done was to fall in debt to these men and be unable to pay. Now suspend that sentence and let me show you they would wrong you just as they wronged me." This occurred in March, and accordingly that officer is cashiered promptly at the request of the Secretary of War himself. Why should he be so prompt to cashier a man for this matter? If he was not guilty of the things concerning which he was slandered, why need he care? If that man was charged with this crime and the sentence hanging in your hands, would you be in such a hurry to destroy him for life if there was no truth in the slanders that were alleged in this article? So instead of being a black-mailing letter it was simply the pleading of a poor man for mercy at the hands of his superior, and that superior, knowing that if the charges should go through the regular channels which Robinson could put them through if he was in the Army would implicate himself, calls up the sentence and cashiers the suppliant so that he cannot possibly put the complaint through the regular channels of the Army. After that Robinson's power to send communications through the regular channels of the various commanding officers would not exist, and with this danger suppressed the crime would never probably get out.

It seems to me that is the most natural construction of that, and under all the evidence this probably was one of the inciting motives to his asking the repeal of the law. Every year a little more complaint came here. In March there was the man who was dismissed from the Army in consequence of his insinuations against the Secretary, and then a democratic House of Representatives coming in, although ever since Grierson's letter he knew of every wrong and every abuse that existed under that law for four years he never said a word about it, but on the 22d of November, 1875, when he feared a day of reckoning, then his sense of duty was enlivened, then he steps up and says, "This law ought to be changed," and his idea probably was, "When I ask for a change of that law myself it is not likely anybody will think I am making money out of it, and have been." That is the motive which it seems to me makes all this enigma explicable.

We have all the time taken the ground and we believe it to be true that there need be no contract concerning a bribe; that there need be no saying, "Here, I give you this as a bribe," but simply, if the defendant took it, knowing it was intended to influence his official conduct, he is guilty of bribery. We have the evidence from Mr. Marsh that there was an understanding between the Secretary and him. It is on page 181 of the trial RECORD.

I had a conversation with Mrs. Bower, the present Mrs. Belknap, on the night of the funeral. She asked me to go up stairs with her to look at the baby in the nursery. I said to her, as near as I can remember, "This child will have money coming to it after a while." She said, "Yes; my sister gave the child to me, and told me the money coming from you I must take and keep for it." I am not certain about the rest of the conversation. I have an indistinct impression of what was said afterward. I said, very likely, "All right; but perhaps the father ought to be consulted," and her reply was that if I sent the money to him she would get it any way for the child, or something of that kind. That is as far as I remember it; but I had some understanding; I have sometimes thought that I said something to General Balknap that night. My entire recollection is indistinct about the matter except her relation of her sister's dying request made an impression on me more than any other part of the conversation. As I said before, I have sometimes thought I said something to General Belknap about it, but I am not at all certain. *At all events I had some understanding that night or subsequently before the next money came due—and I do not remember of any subsequently*—by which I sent the money to General Belknap.

So that he had some understanding with General Belknap.

Mr. CARPENTER. No; he says he could not say he had had with Belknap.

Mr. Manager JENKS. "*At all events I had some understanding that night or subsequently.*"

Mr. CARPENTER. Either with him or Mrs. Bower.

Mr. Manager JENKS. He says:

I have sometimes thought I said something to General Belknap about it, but I am not at all certain. *At all events I had some understanding that night or subsequently before the next money came due, and I do not remember of any subsequently.*

That is the testimony according to the way I read it and the way I understand it, so that he had an understanding with General Belknap, but whether it was that night or subsequently he does not know, but he thinks he had no conversation with him subsequently; so that he proves affirmatively that there was an understanding. But we need not prove affirmatively that there was any understanding. The best recollection of the witness is that he had either that night or subsequently, but when they thus act both alike in the same transaction, is it not enough to infer an understanding? One sends money——

Mr. CARPENTER. Will the counsel allow me to correct him on that point. Mr. Marsh says that he had sometimes thought he had, and he had sometimes thought he had not. I asked him whether he could draw an average between these two things, and he said no; the more he thought of it the less he knew of it. I then asked him if the Senate could get any impression from him, and he said not.

Mr. Manager JENKS. I have read just what the witness stated, and if it does not mean that to you, do not accept it as such, but read it for yourselves and not by the interpolation of something else that transpired afterward between the counsel and the witness, because I am not fully cognizant of everything that has transpired between the counsel and witness; but what the witness says here in print I shall accept as true until we find something to the contrary.

Then, Senators, it seems to me that every element constituting the crime of bribery has been fully established. This man, the defendant, was an officer of the United States. He took undue reward. He took that reward knowing it was intended to influence his official action. As a fact it did influence his official action, because, independently of this, his official action was consistent, straight, and upright. After this his official conduct was not truthful, was not straight, was not upright. He covered this act all the time with some veil of concealment indicating a consciousness in his own soul that crime was lurking under it. And from this we assert that the money was intended to influence his official action and that it did actually have the effect it was intended to have.

Then this man, if this be true, under the definition of the common law as amended by the Constitution of the United States and as incorporated into our statutes, has been guilty of the crime of bribery; and if he be so guilty it is your duty to convict him of that crime. It may be a disagreeable duty; it has been a disagreeable duty to me to charge this man with it: it has been a disagreeable duty to call attention to the fabrications of falsehood with which he screened this crime; but the duty must be assumed and must be done. We have agreed to perform our part to our country; and purity in our councils, the perpetuity of our institutions, the glory of our country depend upon the manhood with which our officers maintain official purity and free our country from corruption and crime. This man should have known that nothing but goodness and greatness could ever carry him safely through official life. As Schiller says:

> But two virtues exist; would they were ever united,
> Ever the good with the great, ever the great with the good.

If his goodness had continued as it was originally impressed upon him and as his good character established, he would not now be here; but that an officer of the United States can take thirteen consecutive payments of money from the soldiers of the United States, or from a sutler, an officer under his own charge, and be vindicated before the Senate of the United States would be such a stain as would certainly greatly derogate from our national greatness and our national glory. We ask you, then, simply to do your duty to your country, and if this man be guilty find him so.

Mr. BLACK. Mr. President and Senators——

Mr. EDMUNDS. I suggest that the Senate take a recess in the trial for ten minutes.

Mr. ANTHONY and others. Fifteen minutes.

Mr. EDMUNDS. Fifteen minutes is suggested. I make the motion in that form.

The motion was agreed to; and the Senate took a recess for fifteen minutes, at the end of which time the Senate was again called to order.

The Senate resumed its session for the trial of the impeachment of William W. Belknap.

The PRESIDENT *pro tempore*. Are the counsel for the respondent ready to proceed?

Mr. CARPENTER. Mr. President, I should like to make an inquiry

whether the impeachment trial can proceed in the absence of a quorum of the Senate?

The PRESIDENT *pro tempore*. It cannot.

Mr. CARPENTER. There has not been a quorum here a good part of to-day.

The PRESIDENT *pro tempore*. The Chair has directed the Sergeant-at-Arms to notify the absentees to be present.

Mr. COCKRELL. Has the roll been called?

The PRESIDENT *pro tempore*. It has not been called.

Mr. STEVENSON. I move that the roll be called in order to ascertain whether there is a quorum.

Mr. EDMUNDS. I ask the Chair if a quorum is present.

The PRESIDENT *pro tempore*. The Chair understands that there is not a quorum present. The Secretary will call the roll.

The Chief Clerk called the roll, and forty-three Senators answered to their names.

The PRESIDENT *pro tempore*. A quorum is present. The counsel will proceed.

Mr. BLACK. Mr. President and Senators, it is my duty to state the points of the case rather than to make an argument upon them. I shall do this as briefly as I can, and at the same time with perfect candor and fairness, without exaggerating the merits of the defense or detracting aught from the force of the evidence which the House of Representatives has produced. I do not wish you to understand that I am indifferent about the result of the cause, for I acknowledge that I feel a deep interest in the fate of General Belknap; not, I trust, altogether because I am his counsel, but for reasons which ought to operate upon the mind of all men, including you, his judges. Since the evidence is given, you know as well as I know that he is a gentleman of marked ability and of stainless honor, whose whole life has been characterized by singular purity of conduct and by steadfast fidelity to all his duties, public and private. I do most devoutly believe that he is the victim of a calumnious accusation, founded upon nothing except certain unfortunate circumstances for which he is not responsible—not responsible at all events in any way which implies guilt or dishonor on his part.

Nothing can extort from me an expression which will derogate from the reverence and respect which all are bound to feel for the American Senate; but if you convict this man upon the evidence here adduced, I shall go to my grave with the conviction resting upon my mind, silent and unexpressed though it be, that the most august tribunal in the world, acting upon the purest motive and exercising the highest wisdom, has been misled by some inscrutable means to pronounce the most unrighteous sentence that ever stained a record or scandalized the administration of the law. That is nothing to you; but it would be a great misfortune to me and to many others in like situation. The comfort and happiness of every citizen depend in a very large measure upon the confidence he feels in the institutions of his country that they will protect him in his life, his liberty, his property, his reputation. If we cannot get justice here, where in all this earth shall we look for it? I cannot conceive of anything which would be more discouraging to the friends of liberty regulated by law than such a judgment as the managers ask you to pronounce in this case.

Another thing disturbs me somewhat: that is the extreme harshness of the managers. They could not restrain themselves even when they were drawing up the articles of impeachment. Instead of following the severe simplicity of the law in the statement of their accusation, they resort to tropes and figures of speech and adjectives and epithets to express their abhorrence of the accused. They say that "well knowing these facts"—certain things which they have averred—"and basely prostituting his high office to his lust for private gain," he did thus and so. That is a kind of objurgatory rhetoric which ought to find no place in any legal document. They have pretermitted no opportunity to denounce him. They have scoffed at our defense as we put it in, and even at the evidence of character which we introduced. They bespatter my client with continued abuse, "here a little and there a little, line upon line and precept upon precept," until "it shall be a vexation only to understand the report." This I think is eminently true of the very distinguished manager from Ohio, [Mr. McMAHON,] who "sat in the seat of the scornful," at the head of the board, while the evidence was under examination, and to my special friend who just now enters the Senate [Mr. JENKS] I know not what to say. I thought his blood and judgment were too well commingled to indulge in that style of address before this body. He, too, affects to look down upon General Belknap with lofty contempt and speaks of him as a "poor corrupted creature." The face of justice may sometimes be darkened by a frown; it is mere spite that disfigures its countenance with a sneer.

But to the law and to the testimony. The question of jurisdiction stands out and meets you wherever you turn. The manager from Massachusetts, [Mr. HOAR,] at a time when this point was under special discussion, admitted that the fact upon which the jurisdiction rests must be affirmed by every Senator who votes for a final conviction. Not only is that true, but it survives even a judgment of conviction, because it may at any time afterward be collaterally drawn into question by another and a different tribunal, even the lowest in the country. For certain reasons which have been given already, and which I do not propose to repeat just now, we regarded a vote upon that subject in our favor by more than one-third of the Senate as an acquittal. If it be not so settled then it is an open question, and as such it has yet to be met and determined according to the conscientious convictions of every individual member. This gives us a right to remind you of the ground upon which we deny the jurisdiction.

In the first place, it is against the letter of the Constitution and altogether beyond the purpose and object for which the power was bestowed upon the House of Representatives. That object manifestly was to relieve the country from the danger of gross misgovernment by the removal *and* disqualification of *the* President, *the* Vice-President, and the incumbents of civil offices who might be found betraying their trusts by the commission of high crimes and misdemeanors. A great deal of skill in dialectics has been bestowed upon the discussion of the subject, but no man has been ingenious enough to answer the great and pertinent question, how can a man be *removed* from an office which he does not hold? It is no answer to say that in this case you do not intend to remove him. The language is "removal *and* disqualification." That is the only judgment that you can pronounce. The two are inseparably together. What the Constitution has joined together let no man put asunder.

Nor is it an answer to say that a man who has been guilty of a crime ought to be disqualified (though he cannot be removed) in order that the hands of the people, or the appointing power, may be so tied up that he shall never again hold the power which he has shown himself capable of abusing. I do not deny that that is plausible, but then it defeats its purpose by proving too much. By parity of reasoning you may show that every man who has ever been guilty of any offense which unfits him for an office ought to be brought here and by impeachment rendered unqualified to hold an office hereafter. At all events it is an effort to do evil that good may come. That is the best that can be said of it.

There is no authority for this view. You find no trace of it in the speeches and writings of the framers, and none in the State conventions where the Constitution was discussed and scrutinized before it was adopted. There is no contemporaneous exposition of the Constitution extant that countenances the view to which we are opposed. No commentator upon the Constitution, unless you take a strained construction of a parenthetical expression made by Mr. Rawle, has given an opinion in that way. On the contrary, the ablest and the greatest among them has come to a conclusion directly opposite, and has reasoned it out in a way that makes it, to me at least, and I think to most other persons, irresistible. We have no judicial authorities to produce on the subject, because it has never come directly, and it never has by any accident come collaterally, before the courts. Any person who will read the book of Mr. Story will be satisfied when they recollect the position he occupied upon the bench of the Supreme Court of the United States, that if the question had ever risen there the decision of the court would have accorded with the opinions which he expressed. Moreover, the assumption of the power now is directly in conflict with the whole practice of this Government from the time of its origin down to the present day, and in the very teeth of all the precedents set by the different States which have similar provisions in their constitutions. Besides, the power to impeach in a case like this, if it be given at all, is given in words so obscure that two impartial minds of equal ability may give the whole of their faculties to the consideration of it and yet come to a directly opposite conclusion. That surely proves that the point is at least a doubtful one. Who is entitled to the benefit of that doubt here? I do not say now, whatever I may have thought once, that the tenth amendment and the principle embodied in the resolutions of 1798 apply to the subject.

Impeachment of a public officer is among the granted powers, and it was bestowed for wise and necessary purposes. Therefore I admit that it ought to be preserved in its whole constitutional vigor. But when a question is made about the extent of the power; when the inquiry is whether it applies to a particular case, that construction which confines it within the narrowest limit is the true and the wise one, because it is what Hamilton calls an awful power, often grossly abused in past times, and in high party times almost sure to be perverted to unjust and evil purposes.

I claim only that each Senator shall act upon his honest convictions. When the question is again propounded whether you have jurisdiction, as it will be when the vote is taken on final sentence, we ask that every individual be true to himself, and so he cannot be false to any man. Let him answer according to the sincere belief which he then entertains. If any one who voted in our favor before shall have changed his mind on subsequent reflection he will be against us of course and ought to be—I mean on this point of the case. If a change has taken place in the other direction, that is, if one who voted in favor of jurisdiction has since come to an opposite conclusion, we expect him also to be faithful, which he certainly cannot be without firmly refusing to exercise a power that in his own opinion does not legally belong to him. I hope it is no unreasonable demand we are making when we merely ask that each individual shall vote on this question honestly and truly for us or against us as his conviction impels him.

This is the most important question that is or can be raised in the case; not to the party accused, but to you and to the general interests of public justice. No court can do any act so criminal or so mischievous as that of usurping authority in a criminal cause which the

law has not given. It depends upon the jurisdiction whether the proceeding is a trial or a conspiracy. In a capital case the execution of a sentence pronounced by a court without jurisdiction is a felonious murder. There can be no doubt about this: that where a judge without jurisdiction and without authority orders a man to be hanged he is guilty of murder just as much as if he went to the prisoner's cell with a rope in his pocket and strangled him with his own hands. Such was the uncontradicted opinion of Sir James Mackintosh on the Jamaica courts-martial. Long before that Governor Wall was tried at the Old Bailey and hanged at Tyburn for causing a man to be whipped to death under a sentence which the court that tried him had no jurisdiction to pronounce.

But our friends on the other side, and especially the gentleman from Wisconsin, [Mr. LYNDE,] insist upon it that every member of this body shall give up his conscience and vote in favor of exercising the jurisdiction, whether he believes it right or not, because a majority have already expressed that opinion. This is 'contrary to all the analogies of the law as much as it is against all reason. I have a case in my mind, and I mention it because it is a simple illustration of the principle I contend for. A bill in equity was filed before a court of chancery consisting of five judges. The allegation, upon which jurisdiction was founded, was that the plaintiff and the defendant were partners. It was objected that they were not partners. Three members of the court, two dissenting, held that the objection to the jurisdiction was not well founded, and ordered the hearing to proceed. An account was taken, and the cause came up for final decree, when the whole subject was re-argued and then the judges unanimously were of opinion that the parties were not in any relation which gave to one of them a right to come into a court of equity against the other. They dismissed the bill and remitted the plaintiff to his action at law. Suppose a military commission consisting of nine officers organized to convict a citizen and kill him for some political offense. Four of them at the start declare their belief that they have no jurisdiction. Five hold otherwise, and the pretended trial goes on. When the question comes upon final conviction shall these four men be compelled by the other five to join the conspiracy against the life of the prisoner and command him to be murdered? May they not give their consciences fair play and vote as they think? If a court which has no jurisdiction declares that it has jurisdiction, its decision is not only erroneous but void, and nobody is bound by it—not even the parties—much less the dissenting judges.

There are two allegations comprehended in this accusation. One is that the accused party is liable to be impeached; in other words, that the civic or political status which he occupies is such as to bring him within the range of the impeaching power as defined in the Constitution. The other is that he has been guilty of crimes and misdemeanors. Both of these are facts which must be affirmatively proved, unless they are admitted; that is to say, they must be established either by the pleadings or the evidence. The whole burden of the proof lies, with its full weight, upon the accusing party. The failure to prove one of them is as fatal to the impeachment as a failure to prove the other; and when any Senator shall vote finally for conviction, he declares upon his oath and solemn affirmation that both of them are true. If he finds that one is false, he is bound to vote against conviction as much as if he found the other to be false, because the two must be taken together; both must co-exist as facts ascertained or else there can be no legal conviction.

If one-half of this Senate shall be of opinion that the status of the party is not such as to bring him within the range of the power of impeachment, and the other half shall be of opinion that, although he is impeachable, yet the facts proved against him do not show that he is guilty of the misdemeanor he is charged with, then how will it be? Certainly no man in the whole Senate can vote against him; all of them must vote, one-half of them upon one part of the case and the other half upon the other, against any final judgment which affirms both to be true.

If this question had arisen in a slightly different form, there never would have been any doubt or any discussion about it. Suppose a contractor for supplies to the Army or Navy were impeached for some crime or misdemeanor. He denies that he is or ever was a civil officer, or that he is in any condition which subjects him to the power of the House of Representatives or the judicial authority of the Senate. They undertake to prove it by showing that he is a contractor. More than one-third of this body are of opinion, after deliberating upon the subject, that that is not sufficient evidence to establish the first part of the case. An acquittal would most certainly follow.

The analogy is perfect between that case and this, for here the attempt is to prove the impeachable status of the party by evidence that he was at one time in his life Secretary of War, and that in the opinion of one-third is as insufficient as the evidence in the case supposed, that he had merely a contract with the Government. Suppose another case which might perhaps be a real one: an officer of the Army employed at the head of a Bureau is impeached for making a gift to the wife of the President, the evidence proving nothing more than this would fail on both points, for a military officer is not impeachable and a mere gift to the wife of his superior is not a crime or misdemeanor.

To make our proposition still clearer, take a case in which the question is one of territorial jurisdiction—where the asserted jurisdiction rests not, as it does here, upon the *status* of the party, but upon the *locus in quo* of the crime. A man, for instance, is indicted in a Federal court for murder alleged in the indictment to have been committed upon the high seas, and therefore within the jurisdiction of the Federal courts. The answer to that is that the offense, by whomsoever committed, was not done upon the high seas, but on Long Island within the body of Kings County, and nobody but God Almighty and the State of New York can enter into judgment with him about it. Is not that, like the charge of murder contained in the same indictment, an issuable and triable fact? And if it be proved that the offense was not committed within the jurisdiction, could the jury permit themselves to find the defendant guilty in manner and form as he stands indicted? Would not any judge in Christendom instruct the jury that a verdict of guilty without clear and satisfactory proof of jurisdiction was a false verdict?

My learned brother from Wisconsin says he has never seen a case in which the question of jurisdiction was not determined as a preliminary before any judgment was pronounced upon the question of guilt. He would not make a good Bourbon, for while he undoubtedly learns a good deal, he does also forget some things. If he taxes his memory he will be able to recollect that he never saw a criminal case in his life in which the question of jurisdiction and the guilt of the party were not submitted at the same time. But he has read and reasoned himself into the belief that Senators who know that this court have no jurisdiction are yet bound to assert that they have, and to exercise it because others are of opinion that that would be right. When a gentleman brings a great number of books and piles them up on the table with pages marked and dog-eared to prove such a proposition, and does actually satisfy himself of it, we are tempted to tell him what somebody said to St. Paul: "Much learning hath made thee mad."

He will not be offended at this; for I do not compare him to Paul except for the vast amount of his learning and the unsettled condition of his opinions, supposed to result from that cause. In no other respect does he bear the slightest resemblance to the great apostle of the Gentiles.

Mr. THURMAN. Mr. President, I wish to submit a question to the counsel, but I do not ask the counsel on the floor to answer it unless he chooses. He may leave it to his colleague if he prefers.

The PRESIDENT *pro tempore*. The question will be read.

The Chief Clerk read as follows:

"If it requires two-thirds of the Senators present to overrule the respondent's plea to the jurisdiction, does it not follow that two-thirds are necessary to overrule any objections to testimony made by the respondent or to sustain an objection to testimony made by the managers?"

Mr. BLACK. No; clearly not. I admit that is a very fair attempt at the *reductio ad absurdum* of our proposition, but it does not succeed. What I say is that two-thirds are required to establish any fact which is an essential element in the conviction. Every other fact may be established and every other order may be made by a bare majority. I do not say that, because this is a court of impeachment and two-thirds of the Senate are required to concur in a final conviction, therefore every time an adjournment is moved it cannot succeed without a majority of two-thirds.

Now let me put a question. If there are two facts charged against us here, each of them equally a necessary part of the conviction, one that he is an impeachable person and one that he is guilty of an impeachable offense, and it requires two-thirds to establish one, does it not follow that two-thirds must concur to establish the other? Upon what principle are you to make a distinction between them? Let us draw our inferences in the other direction.

Now, Senators, I come to a part of the case upon which there is no committal. Every member of this Senate has listened with profound attention to the evidence and with a firm and resolute determination, I am sure, to do that which is right. That other question to this defendant is infinitely more important than anything we have yet discussed. Has he committed the acts which are charged against him as crimes and misdemeanors?

I say that he is not guilty and that you cannot convict him without violating all those rules of evidence which the experience of mankind has shown to be absolutely necessary to the investigation of truth, all those principles of law which were given to us for our protection in property, life, liberty, and reputation, and without which we have no safety, and all those rules of common morality which find their home in every honest heart.

In the first place remember that every man in every criminal case is presumed to be innocent until he is clearly proved to be guilty. That is true of all men, no matter whether they have a bad character or no character at all. The party accused may have spent the half of his life in the penitentiary; his associations may have been evil from his birth; he may have been convicted a thousand times before for kindred offenses; yet when he is accused of any specific offense, it must be proved by incontestable evidence which leaves no reasonable doubt upon the mind of his judges that he is guilty of that very offense with which he is charged before them. It is impossible to say precisely what amount of evidence in any particular case shall be required. The only rule laid down in the books is this: that it must be of such convincing power that his judges would be willing to risk their own most important interests upon the truth of the accusation. If it falls short of that, and he is nevertheless convicted, the

judges themselves are the criminals. I say that applies to every case; but we most assuredly have increased the strength of this presumption, and consequently the force of the evidence necessary to repel it, a hundred-thousand-fold, when we prove such a character for General Belknap as that which he has been shown to have enjoyed. No man ever brought into a court of justice a character higher than he has. No man charged with a criminal offense ever came before his judges with a list of compurgators like this. It is some compensation to him for all that he has endured to have such an indorsement as that which was given him by Judge Miller, by Governor Lowe, by Mr. ALLISON and Mr. WRIGHT. Armed with that, he can look boldly in the face of all detraction, from the frown of a nation down to the scandal of the street-corners. It makes him proof against all that men can utter—

> From the loud roar of foaming calumny
> To the base whisper of the paltry few.

It is a rule, a well-known rule of law, or a rule rather of logic which the law of every country in the world has adopted, that *nemo repentè fuit turpissimus*. No man was ever suddenly changed from a good man into an excessively wicked one. The road that leads downward is sometimes steep, and it gets steeper and steeper the further you go, but it is not perpendicular. The law does not recognize the possibility of a man who has maintained a high moral character until he has passed the meridian of life taking one sudden plunge down to the bottomless pit of infamy. It is not a thing to be believed, that General Belknap would all at once transform himself into the moral monster that his enemies represent him to be. Would he, the upright lawyer who in a long practice never suffered a stain to rest upon his professional integrity; the honest man of business who, swept away by a general calamity, became bankrupt yet paid all his creditors to the uttermost farthing and so went through even that furnace without the smell of smoke upon his garments; the faithful revenue officer who, resisting the temptations under which others were falling around him, always did his whole duty and accounted for every dollar that came into his hands; the gallant soldier, fearless as his sword and true as the steel it was made of to the cause that he fought for; the incorruptible statesman who gathers around him even in this his hour of severe adversity all those who were associated with him in the administration of the most difficult Department of the Government to testify that he never on any occasion swerved one hair's breadth from the bright line of honor that stretched out before him—would he, I want to know, all at once and suddenly become base enough to

> Contaminate his fingers with base bribes!
> And sell the mighty space of his large honors
> For so much trash as may be grasped thus?

The accusation is incredible; it is not true, it is false. One of the managers has told us that it is universally believed and that public opinion all over the country condemns him. If that be the state of the case, it can only be accounted for by supposing that this people are suffering under the judicial blindness with which the children of Israel were afflicted when God sent upon them a strong delusion that they might believe a lie. Nothing can make you believe it without evidence as plain as the sensible and avouch of your own eyes, and even then a sentence of condemnation would be wrung from you by hard compulsion.

But is there any decent pretext for his condemnation to be found in the evidence before you? I boldly affirm that, taking it all together and putting the worst construction upon it, it amounts to nothing but the merest trash upon which a jury in any court of quarter sessions would pronounce a verdict of acquittal without leaving the box.

He is charged with having received a bribe corruptly and in consideration of an official act done or promised to be done in violation of his public duty. Is there anything to prove it?

I will assume, *argumentia gratia*, that a gift of money accepted by a public officer is necessarily a bribe and no proof beyond his simple act of acceptance is necessary to qualify it as corrupt. Is there any proof against him that he was consciously or willfully connected with Marsh's present to his family?

The deceased Mrs. Belknap feeling herself under strong obligations to Mr. Marsh, and in order to express her gratitude for kindnesses which he had shown to her during a severe spell of illness, proposed to Mr. Marsh to become an applicant for some office which she would assist him in getting by means of her influence with her husband. He declined because it would require him to neglect his business, which he could not afford to do. She suggested a post-tradership which he could manage without giving his personal attention. That was more attractive, and he determined at her suggestion that he would make an application, which he did, accompanied with recommendations. I am not instructed to deny, and there is very fair and just reason for thinking it is the fact, though it is not proved, that General Belknap promised to Marsh that he should have the post-tradership for which he applied in consequence of the request of his wife. He united with her in a desire to testify in that way the gratitude which both of them felt to Marsh for what he had done. Accordingly the promise was made. Some time afterward Mr. Evans, the incumbent of the place, came along with a conflicting application backed with the recommendation of the officers at the fort. He insisted on being retained and said that he would be ruined if he was not. Eighty, one hundred, or one hundred and twenty-five thousand dollars of his money had been invested in the business which he would lose if he was suddenly turned out without any arrangement being made between him and his successor, and he besought Mr. Belknap that he would not do so hard a thing. Belknap, when he saw Marsh the next time, told him that this was the situation of Evans and it would be such a hardship as he would not inflict on anybody. "Therefore," said he, "unless you can make some arrangement with Evans that will be satisfactory to him, I will not give you the appointment." Mr. Marsh and Mr. Evans got together and in secret, without communicating what their arrangements were to anybody except the attorney who drew up the articles of agreement between them, made a contract to the effect that Marsh was not to be in any proper sense a partner in the business, but that he was to have a certain fixed portion of the profits. Then General Belknap was told that Mr. Marsh withdrew his own application and desired the appointment of Mr. Evans. Mr. Belknap on that recommendation, together with the recommendation of all the officers of the post, appointed Evans, who continued to hold the place until he was removed last March.

The contract between Evans and Marsh can by no possibility affect your judgment upon the conduct of Belknap, because it is as clear as the bright light of the sun at noonday that Belknap knew nothing about it. But it is true that Mr. Marsh sent to Mrs. Belknap during her life a certain sum of money, and after her death he said to Mrs. Bower, her sister and the lady who afterward married General Belknap, "This child which your sister has left behind is entitled to some money which I wish it to have." She said, "Send it to me and I will take care of it." "How shall I send it?" "If you send it to General Belknap I will get it." He did send it to General Belknap, without any explanation, during the time that Mrs. Bower was there, during the time she was absent in Europe, down to the time of her marriage to General Belknap, and afterwards. But the money was sent without any kind of explanation from Marsh. No explanation, of course, was received from Evans, because he did not know the fact, and it only remains to consider whether General Belknap was truly informed about it by anybody else.

I concede the naked facts which I have stated, that Belknap received money from Marsh, which he either handed over to his family or put into his own pocket without knowing why he was getting it, are of themselves and standing alone a cause of suspicion, and at first blush the inference is not an unfair one that he knew Marsh intended it as a gift, but it is a bare suspicion and falls far short of the plenary proof required to convict in a criminal case. If one of you were sitting as an examining magistrate you might regard this as being sufficient to justify the committal of the party accused, but it is not sufficient for a verdict of guilty. We do not rely, however, upon the incompleteness of this evidence, for the suspicious circumstance is overborne by other facts in the case.

Mr. Marsh was carefully enjoined to secrecy.

"In all your intercourse," says Mrs. Belknap to him, "with General Belknap be careful that you say nothing to him about presents. He is especially scrupulous upon that subject, insomuch that a man who merely hinted at it upon one occasion was kicked down stairs." Marsh obeyed that injunction, and took good care never to say anything to Belknap about his reasons for sending that money.

His conduct before the Committee on War Expenditures is to me a strong proof that the nature of the transaction with Marsh was then for the first time unfolded to his mind. His behavior to Robinson, the cashiered officer who attempted in vain to black-mail him, is another proof that he was wholly unconscious of any ground for finding fault with him about that business. Take these facts and consider them together with his high character and you are bound to presume that this money was received by him in consequence of some explanation furnished to him by his family which made all his acts consistent with his own sense of official propriety. And this concession you owe to him in an especial manner when you consider that besides himself there is only one human being who could testify upon the subject, and her mouth is closed by her marriage with him.

Now, I say that is the result of the evidence upon this subject, assuming, as I have assumed for the sake of the argument alone, that General Belknap could not take a present, knowing it and understanding it to be a present from Marsh, without being guilty of a high crime and misdemeanor. But I deny that that is the law or the fact. When you prove that he has taken a present, or that his wife has taken a present with his perfect knowledge and with his full approbation, you are just as far as ever you were from having the materials for a legal conviction. Why do I say this? Because the Constitution in plain and emphatic words declares that you can convict him only for high crimes and misdemeanors. The managers have contended that to convict upon impeachment it is not necessary to prove that the party has been guilty of an offense made punishable by law. I acknowledge this to be the rule in England. There a man may be impeached for an offense which is not indictable and may suffer a bill of pains and penalties for acts that are neither impeachable nor indictable; but here the Constitution expressly provides that it must be a crime or a misdemeanor which will authorize a conviction upon impeachment. What is a crime? I need not refer to the horn-books of the law to answer that question; but if you want authority look at Bouvier's Law Dictionary, which the managers have brought here for another purpose. A crime is a pub-

lic offense, prohibited and made punishable by law. A misdemeanor is defined precisely in the same way, except that it is a lower grade of offense. Is there any law or custom or usage in this country which prohibits the receipt of a gift by a public officer, or punishes it as a criminal offense? Most certainly not. Then you cannot convict this party without saying that the money received by Belknap meant something more and worse than a gift.

I am aware that there is a kind of answer to this which seems plausible. Mr. Randolph in the case of Judge Chase made a very strong argument to show that the power of impeachment is not confined to cases in which there is legal criminality. He contended, as others have, that the public interest requires more extended use of the power. A judge may be guilty of no defined offense against law, but if he comes upon the bench intoxicated, or uses language profane and indecent, or habitually neglects the performance of his duty, he becomes an obstruction to the administration of justice and ought to be removed, and the power of impeachment ought to be used for that purpose. But all this is the worst and most pernicious kind of reasoning. It is sufficiently answered by merely holding up the Constitution and showing that it is not so nominated in the bond.

One of the Senators, the chairman of the Judiciary Committee, said the other day that fidelity to existing law was a duty of the highest obligation, and upon that principle I insist when I ask you to take the Constitution itself and laws passed in pursuance thereof as the lamp to your feet and the guide to your path. If the managers wish you to say that General Belknap has been guilty of a crime on proof that he has done an act which is nowhere defined and made punishable as a crime, then they desire you to say upon your oaths and affirmations that which is wholly untrue. Why do they not take another mode of accomplishing the same end? If the demands of the public interest require that somebody shall commit perjury, why do they not summon a witness to testify that the accused has actually committed some prohibited act? Would it not be easier to get a false witness who would swear to the fact than to persuade a whole Senate falsely to assert the fact upon their oaths without any evidence? There is an old case which may serve them as a precedent. It happened that Ahab, king of Samaria, was very anxious to become the owner of a vineyard which belonged to Naboth, but the owner absolutely refused to let him have it. His wife, Jezebel, was determined to get it by the law of forfeiture. If she could have Naboth convicted of a capital offense and executed, the vineyard by operation of law would become the property of the king. She did not go to the public authorities or before any judicial tribunal and without evidence demand an adjudication in her favor, but she procured two sons of Belial, brought them before the congregation of the people, and set them up to swear falsely that Naboth had been guilty of blasphemy against God and the king, and upon that he was sentenced to be stoned to death. Then she told her husband, "Arise, take possession of the vineyard of the Jezreelite which he refused to give thee for money, for Naboth is not alive, but dead." Why do they not follow this example? Because they revolt from the bare thought of bringing a perjured witness into the case; but how much better is a false judgment than false evidence?

I am well aware that some of the managers allege that this money was received not as a mere gift but under circumstances which make it come within the definition of bribery. But they make that allegation not only without any legal, sufficient, or satisfactory proof of its truth, but in the face of evidence to the contrary which is irresistible, overwhelming, and conclusive. And this evidence, be it remembered, comes from the mouth of their own witness, whom they dare not impeach. He swears that he never had any contract or agreement of any kind with General Belknap upon this subject-matter; that he did not send him the money with any desire or intent to influence his official conduct; that he never received from him any official favor in consideration of money either before or after he sent it. It was, according to his account of it, purely a gracious gift, which he bestowed solely because it gave him pleasure to do it. This is either true or it is false. If it is true, it puts an end to this case, for it eliminates from the transaction everything that is criminal. If it be false, then the whole accusation is false, for it is built on Marsh's testimony alone—the man whom they have introduced for the purpose of proving their case has given testimony which is untrue from beginning to end. They do not say that; I do not either. I do not doubt that he sent to General Belknap, or to some member of his family, certain sums of money at different times as a mere present. When he said it was a mere gift, unaccompanied with any corrupt intent or any corrupt contracts, he told the truth, the whole truth, and nothing but the truth.

Now, I aver that it is not wrong in any criminal sense for an officer to receive a present. There is no law which forbids it. More than that, there is no custom or habit or sentiment among the public officers of this day which condemns it or makes it disreputable. The state of the public conscience in this country does not call for the enactment of any law to prohibit it. I was a member of the Pennsylvania convention to reform the constitution of that State. I tried my best, and so did others of greater influence and more ability than mine, to get inserted into the organic law a definition of bribery which would include presents of any kind, given under any pretense whatever, so that no officer could ever, without violating his oath and exposing himself to the danger of a prosecution which would send him to the penitentiary, receive money from anybody. But I found myself shooting at the stars. I was told that I was trying to make the officers of the Commonwealth righteous overmuch; that the mere receipt of money was of itself an innocent thing unless there was a corrupt contract or a corrupt intent, but when the corrupt intent did exist, it ought to be proved like any other fact which is necessary to make out the guilt of the party. By this and other similar arguments a measure which I thought a very important one was thrown out.

I do not myself believe that presents are proper when taken by a public officer from a person who may by any possibility in the future have an interest in the officer's performance of his duties. I think so because, in the first place, "a gift blindeth the eye and perverteth the judgment of the righteous;" and also because, in the next place, these gifts may be used to cover essential bribery. I do not believe that the institutions of this country are perfectly safe in the hands of men who habitually receive presents from their friends and constituents or from anybody. But I say now that there is no law which makes it a crime or misdemeanor; and that is not all, there is no code of morals known to the public men of this age, or to the men who now hold office, which condemns it. If our fathers could have foreseen the fatal degeneracy of their sons, perhaps they might have made some provision to prevent it; but they inserted nothing to prohibit it either in their Constitution or in their statutes, and you cannot in your judicial capacity supply the *casus omissus*.

"I give you an office and you give me another office," or "I give you office and you give me money;" what of that? If the exchange was preceded by a contract which made one the consideration of the other, that is bribery and corruption, but if there was no contract of that kind the case is otherwise; and so it has been held in the case of the greatest and wisest and best men we have ever had in this country.

There was a time in 1825 when Mr. Clay held in his hand the Presidency of the United States and could give it to whom he pleased. He handed it over to John Quincy Adams, against whom there was a large majority of the States and the people. He did it in opposition to instructions almost unanimous from his constituents, and in the face of his own recorded opinion that Mr. Adams was not a proper person to be Chief Magistrate of the country. The first thing that Mr. Adams did after he went into office was to appoint Mr. Clay Secretary of State. Did these two men bribe one another? They were charged with making merchandise of the highest offices under the Government. The defense which both of them made against the charge of bribery was precisely the same that we make here, namely, that no proof could be produced to show the previous existence of a corrupt contract or understanding which could have influenced their conduct; and the general public acquitted them on that ground alone.

Remember I do not hold up this transaction as an example of public virtue. I admire much more the high-toned behavior of Mr. Bayard twenty-five years earlier. He did not vote for Mr. Jefferson, but he had it in his power to protract the election in the House of Representatives so that Mr. Jefferson and Colonel Burr would both of them have been defeated. For good and sufficient public reasons he determined that he would not use that power, but would retire from the contest and allow Mr. Jefferson's friends to elect him. After a few days Mr. Adams, the then incumbent of the presidential chair, offered him the mission to France. He said: "No; I cannot get to my post of duty until Mr. Jefferson shall be inaugurated, and then he will have the power to recall me. I will not hold any office under him, as I would virtually be holding this office, lest it might be inferred that I have received a reward for my action in the presidential election."

The most distinguished man perhaps that this country ever produced—certainly the greatest orator—one who was gifted with the most exquisitively organized intellect that ever was bestowed upon any of the children of men—was appointed Secretary of State by General Taylor. He said that he could not live upon the salary in a way that would accord with his taste and habits, and he invited his friends to make presents to him, and they did contribute among them $100,000, which they invested, and gave him the interest of it for the remainder of his life. Was that bribery? It was given by merchants who were pleased with his advocacy of the bank, by manufacturers whose interests he had promoted by supporting a protective tariff, perhaps also by lovers of the Constitution who admired him for the noble defense he had made of its principles. But there was no evidence and no reason to believe, and nobody ever did believe, that it was given as a consideration for previous services or in pursuance of a contract for future services. Therefore, and therefore alone, he was held to be innocent.

The manager from Massachusetts [Mr. HOAR] said, speaking of the Union Pacific Railroad, that every foot of that road had been founded in corruption and built with the wages of iniquity. That is true; and it is equally well known that the managers of that corrupt concern gave large amounts of their stock and bonds to the wife of a Senator who was afterward elected Vice-President. The wife received it with the full consent of the husband. Though he had voted for the charter of the corporation and afterward voted to extend its privileges and always vindicated it by his speeches on this floor, there was no proof that the speeches and votes were the consideration given for the bonds and the stock. The absence of that proof

left him in the full possession of the character which he had earned by his previous life, his popularity moulted no feather, he lived respected and honored, and died in the odor of sanctity.

The members of the House of Representatives who received the same stock and bonds from the agents of the same company considered themselves as fully acquitted when the committee failed to find that there had been any corrupt contract, and such was the view of the House when for that reason it refused to pass a vote of censure.

If Mr. Lincoln had been impeached and evidence had been introduced against him, like the trash you have here, to show that his wife with or without his knowledge took a present from some contractor or some officer, who would have listened to it with patience? Mr. Lincoln could not have come into this court with a higher character than General Belknap. Judge Davis would have sworn for him that he was all his life-time scrupulously honest. The governor of his State, and any number of ex-governors, and the Senators in Congress would have testified to the same fact; but he could not have had a character one whit better than that which is made out by General Belknap, and by the force of that character the accusation would have been swept away like chaff upon the summer thrashing-floor. Nobody would have thought of a conviction.

That the present Chief Magistrate has taken large gifts from his friends is a fact as well known as any other in the history of the country. He did it openly without an attempt at concealment or denial. He not only received money and lands and houses and goods amounting in the aggregate to an enormous sum, but he conformed the policy of his administration to the interests and wishes of the donors. Nay, he did more than that; he appointed the men who brought him these gifts to the highest offices which he could bestow in return. Does anybody assert that General Grant was guilty of an impeachable crime in taking these presents even though the receipt of them was followed by official favors extended to the givers? Do we not all regard him still as one of the greatest heroes and sages the world has produced? Instead of being impeached and ignominiously removed from office he was flattered and re-elected. This all happens justly upon the legal principle which commands you to presume everything in favor of innocence. General Grant's wealthy friends in New York gave him money not with any evil design upon his integrity, but because it was a pleasure to themselves; and the President appointed them to office afterward not because they had bought his favor, but because he thought the public good required it. This is the just and legal conclusion in every case where there is no proof of a bargain and no distinct evidence of an intent to influence and be influenced corruptly. Is the law a respecter of persons? Does not a presumption which applies to the President in the plenitude of his power apply with equal force and even with stronger reasons to his fallen minister?

If the House of Representatives considered this subject coolly and came to the deliberate conclusion that the reception of a gift by a public officer was either in itself a punishable crime or evidence of a crime it was a sin and a shame to drag the Secretary of War before this tribunal after he became a private citizen, while they allowed the President to finish his career of wickedness without interruption. Were those gallant gentlemen afraid to take the Chief Magistrate by the throat, or did they suppose that the Senate would use one measure of justice for Grant and another for Belknap? No, they did no such injustice either to you or to themselves. They thought they could produce satisfactory evidence to show that the gift to Belknap was something more than a gift, that it was a bribe paid in pursuance of a contract or in consideration of official favors bestowed or promised. That is what they allege in the articles. But having utterly failed to prove it they ought in honor and conscience to give up the case.

If the giving or receiving of presents is necessarily and in its own nature always criminal, and if the power to impeach for it survives the term of office, why have they overlooked the offense of Judge Hoar who gave the President a library of costly literature and law? They might prove that the giver of that present was afterward commissioned by the receiver as Attorney-General and nominated for Judge of the Supreme Court; and they might argue with some show of reason that these appointments being *post hoc* were also *propter hoc*. But the inference would have been false; for Judge Hoar in making the gift acted merely upon the impulses of a generous heart, and the President promoted him because he was the best man for the offices he put him in. Such being the natural and the legal presumption in that case, why should it not also be made in this case?

Another distinguished gentleman held the office of Attorney-General and was afterward by a kind of translation sent to the court of St. James, where he now resides as the American plenipotentiary. Before he got these high places he not only admitted but proclaimed that he had subscribed $20,000 to a fund for the benefit of the President. Who can prove that these acts were corrupt? Or who will dare to assert it without proof?

There is another class of cases, more extensive and more numerous than these, in which the law and public opinion indulges officers in giving and in receiving money for their personal purposes. A high-placed gentleman wants to be continued in power and to that end a certain number of popular votes is required. He demands from his subordinates money enough to get the votes and he enforces the order by a distinct notification that whosoever refuses to contribute will be dismissed from his place. These very post-traders were forced to make enormous contributions in that way and the aggregate sum thus raised for an important election amounts to many millions of dollars. Is this criminal? Certainly it is, if you adopt the principle of the managers that every voluntary payment by an officer to an officer is *ipso facto* a crime. Is it corrupt? I do not say so. But if you say that Belknap could not receive money from Marsh without being corrupt, then you condemn to utter infamy the system to which I refer. It pervades the whole executive administration, If it be corrupt, then all the officers of the Government are thriving by corruption alone. They can keep their places if they pay for them in this way; if not, not. By that dishonest means alone can they hope to gain promotion. A public man, to use the figure of Curran applied to a similar condition of things in another country, is like a dead body in a mill-pond; he lies quietly and obscurely at the bottom as long as there is any soundness in him; but his bulk expands with the gases which corruption evolves; "he becomes buoyant by putrefaction and rises as he rots." Surely it is not proper to say that this system is corrupt seeing that all the great and good men now in the Executive Departments constantly practice it. Whether it is an evil that ought to be abolished or a virtue to be encouraged, is certainly a question on which there is some difference of opinion. What I assert is that there is no law which forbids it, nor no rule of morality among public officers which condemns it. That being the case, is it not horrible to convict this party who has certainly done nothing worse?

I bring no railing accusation against any of the persons I have mentioned. I declare that all these officers who have received and given money are innocent of any offense known to the law, and therefore not impeachable. I have mentioned their cases merely for the purpose of illustration and to show that General Belknap has not acted criminally any more than the rest of them. I do not ask you to acquit him if he is guilty on the ground that others are equally guilty, but I show his freedom from criminality by proving that others who have done similar things are not only free from guilt but in universal estimation honored and respected.

According to our view of the evidence (and it is impossible that we can be mistaken) he is fairly entitled to an acquittal, because—

1. The evidence excites no more than a bare suspicion that he knew what the money was sent to him for.

2. The utmost extent to which the evidence goes can establish nothing against him except that he received certain money from Marsh as a gracious gift which Marsh sent him solely because it gave him pleasure to do so. The allegation that this was given in pursuance of a corrupt contract for a corrupt consideration or with a corrupt intent is not only unsupported by proof but completely and thoroughly disproved.

3. A naked present like this is not criminal in him that gives or in him that receives it.

4. The receipt of such a present not being prohibited or made punishable by law is not a crime or misdemeanor, and therefore not impeachable.

If, therefore, you decide this case according to the law and the evidence you must necessarily acquit him.

You will no doubt be glad to hear me say that I am done.

Mr. SHERMAN. Mr. President, I should like to have a short executive session. I move that the Senate sitting as a court adjourn.

The motion was agreed to; and the Senate sitting for the trial of the impeachment adjourned.

TUESDAY, *July* 25, 1876.

The PRESIDENT *pro tempore* having announced the arrival of the hour fixed, legislative and executive business was suspended and the Senate proceeded to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

The PRESIDENT *pro tempore*. The usual notice will be transmitted to the House of Representatives.

Mr. Lord and Mr. McMahon, of the managers on the part of the House of Representatives, appeared.

The respondent appeared with his counsel, Messrs. Blair, Black, and Carpenter.

The Secretary proceeded to read the journal of the proceedings of the Senate sitting yesterday for the trial of impeachment, when, on the motion of Mr. SHERMAN, and by unanimous consent, the further reading was dispensed with.

The PRESIDENT *pro tempore*. The Senate is now ready to proceed with the trial. Senators will please give their attention.

Mr. CARPENTER. Mr. President and Senators——

Mr. LOGAN. Before the counsel proceeds, I will state that I have heard some complaints made about the position that the counsel and managers have to occupy in the presence of the Senate. I therefore suggest that the counsel be allowed to occupy any position he desires from which to address the Senate.

Mr. EDMUNDS. We can see the counsel better when they stand in front of the chair than anywhere else.

Mr. LOGAN. I have heard complaints made of difficulty in hearing them.

Mr. CONKLING. Where would the counsel rather stand?

Mr. CARPENTER. If there is no objection to it and no impropriety in it, if I could be permitted to stand in the outer tier of seats, I could be heard better there than anywhere else.

Mr. CONKLING. I will give the counsel my seat; and there is his old seat.

The PRESIDENT *pro tempore*. The Chair hears no objection and the counsel will select his seat.

Mr. Carpenter proceeded to Mr. SPENCER's place, that formerly occupied by himself when Senator, in the outer tier.

The PRESIDENT *pro tempore*. Senators will give their attention.

Mr. CARPENTER proceeded to address the Senate on behalf of the respondent.

Mr. SHERMAN, (at two o'clock and fifteen minutes p. m.) Would counsel like a recess now or would he prefer to go on longer?

Mr. CARPENTER. I am willing to yield for a recess now.

Mr. SHERMAN. I move that the Senate take the usual recess of fifteen minutes.

The motion was agreed to; and the Senate sitting for the trial of the impeachment took a recess for fifteen minutes, at the expiration of which time the Senate sitting for the trial resumed its session.

Mr. KERNAN. I move that the Sergeant-at-Arms be directed to request the attendance of absentees.

Mr. CONKLING. I suggest to my colleague he had better have a call of the Senate. There is no way of ascertaining who the absentees are without a call.

Mr. KERNAN. Very well; I accept that suggestion.

The PRESIDENT *pro tempore*. The Secretary will call the roll.

Thirty-one Senators answered to their names.

Mr. KERNAN. I move that the absentees be requested to attend.

The PRESIDENT *pro tempore*. The Senator from New York moves that the Sergeant-at-Arms be directed to request the attendance of absentees.

The motion was agreed to.

The PRESIDENT *pro tempore*. The Sergeant-at-Arms will execute the order of the Senate.

At two o'clock and forty-six minutes a quorum appeared.

The PRESIDENT *pro tempore*. A quorum has appeared; and the counsel will proceed.

Mr. CARPENTER resumed and continued his argument.

Having spoken till four o'clock,

Mr. FRELINGHUYSEN. Mr. President, counsel says that it will be agreeable to him if the court should adjourn at this point in his argument. I therefore move that the Senate sitting as a court for the trial of the impeachment adjourn.

Mr. EDMUNDS. No, we ought to finish it to-night.

The PRESIDENT *pro tempore*. The Senator from New Jersey moves that the Senate sitting in trial adjourn.

Mr. SHERMAN. I should like to ask counsel whether it would be convenient for him to close his argument this evening?

The PRESIDENT *pro tempore*. The motion is not debatable.

The motion was not agreed to.

Mr. CARPENTER. I come now, Mr. President, to discuss the questions of law in this case which in my opinion are entirely conclusive of it.

[Without concluding his argument, Mr. Carpenter yielded to Mr. SHERMAN for a motion to take a recess. His speech will be published in full when completed.]

Mr. SHERMAN. If counsel will allow me, I will move that the court take a recess until half past seven to test the sense of the Senate.

The PRESIDENT *pro tempore*. The Senator from Ohio moves that the Senate sitting for the trial take a recess until half past seven o'clock.

The motion was not agreed to; there being on a division—ayes 22, noes 23.

Mr. THURMAN. I move that the Senate sitting for this trial do now adjourn.

The question being put, there were on a division—ayes 23, noes 25.

Mr. CONKLING. I ask for the yeas and nays on the motion to adjourn.

The yeas and nays were ordered; and being taken, resulted—yeas 33, nays 18; as follows:

YEAS—Messrs. Allison, Anthony, Bayard, Booth, Bontwell, Bruce, Cameron of Wisconsin, Christiancy, Clayton, Conkling, Conover, Cragin, Ferry, Frelinghuysen, Hamilton, Howe, Ingalls, Jones of Florida, Jones of Nevada, Logan, McCreery, McMillan, Mitchell, Norwood, Oglesby, Paddock, Patterson, Ransom, Stevenson, Thurman, West, Windom, and Wright—33.

NAYS—Messrs. Bogy, Cockrell, Cooper, Davis, Dennis, Edmunds, Gordon, Harvey, Kelly, Kernan, McDonald, Merrimon, Morrill, Randolph, Robertson, Sherman, Wallace, and Withers—18.

ABSENT—Messrs. Alcorn, Barnum, Burnside, Cameron of Pennsylvania, Caperton, Dawes, Dorsey, Eaton, Goldthwaite, Hamlin, Hitchcock, Johnston, Key, Maxey Morton, Sargent, Saulsbury, Sharon, Spencer, Wadleigh, and Whyte—21.

So the motion was agreed to; and (at four o'clock and fifteen minutes p. m.) the Senate sitting for the trial of the impeachment adjourned.

WEDNESDAY, *July* 26, 1876.

The PRESIDENT *pro tempore*. Legislative and executive business will be suspended and the Senate will proceed to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

The PRESIDENT *pro tempore*. The usual notice will be transmitted to the House of Representatives.

Mr. LORD, Mr. LYNDE, Mr. MCMAHON, Mr. JENKS, and Mr. LAPHAM, of the managers on the part of the House of Representatives, appeared.

The respondent appeared with his counsel, Messrs. Blair and Carpenter.

The Secretary read the journal of the proceedings of the Senate sitting yesterday for the trial of the impeachment.

Mr. PADDOCK. I hardly think there is a quorum of the Senate present.

The PRESIDENT *pro tempore*. The roll of the Senate will be called.

Mr. EDMUNDS. Let the Chair count the Senate.

The PRESIDENT *pro tempore*, (after a pause.) There is not a quorum present. The Secretary will call the roll.

The Secretary called the roll of the Senate, and forty Senators answered to their names.

The PRESIDENT *pro tempore*. There is a quorum present. The Journal will stand approved.

Mr. COCKRELL. I desire to state that my colleague [Mr. BOGY] is absent, having been called home by the illness of his daughter.

The PRESIDENT *pro tempore*. The Senate is now ready to proceed with the trial.

Mr. CARPENTER resumed and concluded his argument on behalf of the respondent. It is, in full, as follows:

Mr. President and Senators, we are approaching the termination of a protracted and painful trial, and the duty of closing the defense has been intrusted to me. I am to make the last suggestions on behalf of the respondent, to a tribunal which has his reputation and honor in its keeping. The importance of the cause to the respondent, and to all those who have heretofore held and to those who may hereafter hold any office under the Government of the United States, from the highest to the lowest, will secure, I doubt not, judicial attention to an argument which must be uninteresting, except to those who may impose and those who may suffer from the infliction of the judgment and sentence which the House of Representatives of the United States is demanding against the respondent.

I know how many and what various cares absorb the attention of Senators, in the last days of a long session; and how difficult it is for Senators to remain in their seats. But I appeal to you, once for all, that before you pass judgment upon the respondent, you owe it to him, to yourselves, and to justice, to put aside other business, and hear patiently, not only the important points, but even the details of testimony, upon which his guilt or innocence depends.

No person can justly be convicted until his triers have patiently heard, and carefully considered, everything that can be said on his behalf.

Reverence of counsel for the bench is the natural result of their mutual relations. And yet in the excitement of an animated criminal trial counsel, most distinguished for amiability, are sometimes incited to make remarks which, after reflection, they sincerely regret. Any subject viewed from the different stand-points of a judge and an advocate will present different aspects. The advocate, sympathizing with the distress of his clients, and often seeing far deeper into the absolute truth of a case than a judge is permitted to see; knowing many circumstances of alleviation, and many important exculpatory facts derived from his client, which cannot be disclosed in a tribunal where the client and his wife are excluded from the witness stand; heated with days and nights of anxious toil, striving to develop the truth through the imperfect statements which can be made by outside witnesses; is entitled to some indulgence. The few facts which can be made known to the judge, are in the mind of the advocate so blended with, and colored by, other facts incapable of legal proof, that a ruling proper from the judge's stand-point, is full of disappointment to the advocate.

And in this, my last appearance before this tribunal, I desire to apologize for any seemingly disrespectful remark made by me in this cause. And let me say that in the line of argument which my duty compels me to pursue to-day, while I shall question the correctness of some rulings of the court, I shall do so in a respectful manner.

Lawyers are as necessary to the administration of justice as judges. Chief Justice Marshall, delivering the opinion of the court overruling one of its former decisions, apologized for the error by saying that the former case had not been *argued by counsel*.

Washburn, in his Judicial History of Massachusetts, page 145, speaking of the trials for witchcraft, says:

For the credit of New England, it would be well if oblivion could settle down over this period of her annals. But the history of that court furnishes a lesson which ought never to be forgotten. It was a popular tribunal; there was not a lawyer concerned in its proceedings. Every rule of evidence by which the courts of common law are governed was abrogated, and judges and jurors were left, untrammeled by "the quibbles of the law" to follow their own feelings and the popular will. Human nature may have changed, and a court equally popular and equally

unacquainted with the rules which govern judicial proceedings, might stand against a strong popular delusion or excitement, should such an occasion again occur, but he must disregard the light of experience who could hope to be safe under its administration. *It is to be believed* that abuses as monstrous as the whole proceedings of that court, in fact, were, could have been tolerated *had there been an enlightened bar in Massachusetts whose services should have been exerted in favor of the accused!* It was not for the want of learning or honesty on the part of those who were engaged in those trials that injustice was done. It was that their habits of thought, their entire ignorance of the salutary rules of law, and their want of familiarity with the process of investigating the merits of judicial controversies, unfitted them to hold the scales of justice with impartial hands, and to discriminate between the excited prejudices of the many, and the truth or falsehood of the charges which they were called upon to examine.

The brightest periods in the history of English jurisprudence have been those in which counsel have enjoyed the greatest freedom of speech and the widest range of discussion; and every era of despotism and tyranny has been marked by attempts of judges to browbeat lawyers at their bar.

It was my fortune to be a listener for several years to the debates in this body; and I could refer to several instances illustrating the freedom of speech of Senators in debate. I have heard Senators denounce laws passed by a majority of the Senate as having been inspired by party spirit, as prejudicial to the public interests, and in wanton violation of the Constitution. And yet every Senator was under oath to support the Constitution when he voted for the laws thus assailed.

No one, I presume, would deny to counsel who appear in the defense of a citizen on trial at your bar as much freedom of speech as is permitted to Senators in mutual consultation. Anciently the oath administered to all the lawyers of England was, "not to present anything false to the court, but to make war for their clients." How this is understood in English courts of justice is illustrated by a scene in the celebrated trial of the Dean of St. Asaph, in the court of king's bench, for libel; in which an eminent judge, and an advocate not less eminent, appeared as follows; the jury returned a verdict, "guilty of publishing only."

Mr. ERSKINE. You find him guilty of publishing only?
A JUROR. Guilty only of publishing.

And, after considerable altercation, the following scene occurred:

Mr. Justice BULLER. I will take the verdict as they mean to give it; it shall not be altered. Gentlemen, if I understand you right, your verdict is this, you mean to say guilty of publishing this libel?
A JUROR. No; the pamphlet; we do not decide upon its being a libel.
Mr. Justice BULLER. You say he is guilty of publishing the pamphlet, and that the meaning of the innuendoes is as stated in the indictment.
A JUROR. Certainly.
Mr. ERSKINE. Is the word "only" to stand part of your verdict?
A JUROR. Certainly.
Mr. ERSKINE. Then I insist it shall be recorded.
Mr. Justice BULLER. Then the verdict must be misunderstood; let me understand the jury.
Mr. ERSKINE. The jury do understand their verdict.
Mr. Justice BULLER. Sir, I will not be interrupted.
Mr. ERSKINE. I stand here as an advocate for a brother citizen, and I desire that the word "only" may be recorded.
Mr. Justice BULLER. *Sit down, sir. Remember your duty, or I shall be obliged to proceed in another manner.*
Mr. ERSKINE. Your lordship may proceed in what manner you think fit. *I know my duty as well as your lordship knows yours. I shall not alter my conduct.*

The name of Erskine stands at the head of the long list of great English advocates, and to the noble stand made by him against a wrong-headed court, in this and other libel cases, we owe the present liberty of the press; the jury having the right to decide the law as well as the fact, and determine whether the matter published is a libel or not.

I shall have no occasion to transcend or even approach the determined language there employed; and I refer to it only to show what freedom of speech is tolerated in an English court of justice from an advocate defending the rights of his client against supposed judicial encroachment.

The language employed by Lord Brougham, in the trial of Queen Caroline, is well known. He there places the fealty of an advocate to his client above the allegiance of the advocate to his king.

But, repeating what I said the other day, I maintain that a motion to vacate an order made by this court, or a motion for a rehearing upon any question decided by the court, is not only not a contempt of court, nor an evidence of disrespect, but is a usual and orderly proceeding in every court exercising *original jurisdiction;* and is as much a matter of absolute right, as to plead the general issue, or call a witness on the trial.

Half the criminal cases in England and America are heard on motions for new trial, upon the ground that the judge at the trial erred in admitting testimony or instructing the jury. No one regards such motion as disrespectful to the court. And nothing better indicates the real eminence of a judge than the patience with which he listens to arguments intended to persuade him that he has committed errors. Nobody ever thought such motion a disrespect to the court. In every court, English or American, exercising original equitable jurisdiction, motions for rehearing are recognized as one of the regular proceedings in a cause; and the bill of review for errors of law apparent upon the record is as well known to the profession and as graciously received by the courts, as any other bills.

The rules of the Supreme Court of the United States regulate the application for rehearing of causes in that court.

Nor is a petition to be relieved from conviction in case of impeachment, for error, a novelty.

In the case of Alice Perrers, such petition was filed. (Hale's Jurisdiction House of Lords, page 174.)

This case presents an instance of the impeachment of a subject not in office, nor exercising any franchise known to the law. Alice Perrers was the mistress of Edward III; a position well known in the reigns of the festive kings of England, but never recognized by law, much less exalted to the dignity of an office. She was impeached; simple Alice Perrers—without title, franchise, or office; was impeached for that she had perverted the course of justice; that she had taken her seat on the bench with the judges, dictating how they should decide causes; and, when she found them perverse, she complained to her royal lover, who found means to bring the judges to reason. At the April session of Parliament, 1376, the fiftieth year of the reign of Edward III, she was convicted and banished. After her conviction a statute was enacted at the same session, prohibiting any woman and, particularly, Alice Perrers, to pursue causes and actions in the king's courts, by way of maintenance, and for hire and reward, on pain of being banished out of the realm. (Lingard's History of England, volume 3, page 201.)

The next year, 1377, was celebrated in England as a year of jubilee. At the session of Parliament which commenced early in 1377, the Commons presented to the king a petition, reciting that many persons had been impeached in the next preceding Parliament, without due process, &c., and praying that they might be restored to their former estates, dignities, and other things. The king then demanded to know if their request was made for all that had been impeached; and the speaker replied that their request was for all. The king then told them they must present specific requests naming the persons to be relieved and the reasons.

Among other petitions presented was one for Alice Perrers; setting forth that she had been by untrue suggestion, and undue process in the last Parliament, foreclosed of the common liberty which every liege subject of the king, *as well men as women*, ought freely to enjoy, unless they be convict of a crime, for which they are to forfeit it; that therefore it would please its majesty, for the love of God and right justice to have consideration, that the said *Alice* was never present in Parliament, nor duly admitted to answer anything for which she was adjudged; and for this cause to reverse the judgment, and cause "her to be restored entirely to her former estate; the said judgment, or any prohibition made against the said *Alice* in the same Parliament notwithstanding."

The king pardoned her and she returned to her former relations with him; faithfully attending him in his last illness, until the morning of his death, when she stole his jewelry and ran away.

But Dame Alice continued her crooked political practices, and in the first session of Parliament, Richard II, 1377, she was again impeached; again convicted, and banished the realm. At a subsequent session, 2 Richard II, she filed in Parliament a petition for reversal of the second conviction, for error. The new king, who seems to have felt some tenderness for her, licensed counsel to appear for her and prosecute the petition. But the Lords, upon consideration of the petition, answered, that the king could accomplish the same end by granting a pardon.

Parliament, in the fullness of its power, has repeatedly reversed convictions had in former Parliaments, restoring to the heirs forfeited estates, though it could not recall the beheaded defendants. And petitions for such reversals have been repeatedly filed; and Parliament has always considered them.

In defense of the practice of rehearing, and illustrating its efficacy, I will refer to an instance in which a judgment—not rendered by a human tribunal against an individual, but by the Almighty against a whole people—was reversed on re-argument. The case is recorded in Exodus, xxxii. 7-14. I am justified in referring to precedents concerning the Jews, because the manager, who opened this case, has sought to convict the respondent, not for a violation of the statutes of the United States, but of one of the commandments to the Jews—"Thou shalt not accept gifts, for gifts blind the eyes of the wise, and change the words of the just." And the argument of the manager, remarkable for its bigotry and want of charity, might more appropriately have been delivered to a congregation of Pharisees.

It was after Aaron had directed the people to mold a golden calf, and the people rising in the morning had offered before it holocausts and peace-victims, and, after sitting down to eat and drink, had risen up to play.

And the Lord said unto Moses, *Go*, get thee down.

Moses had been presenting the case of Israel and the Lord had heard enough of it.

Go, get thee down; for thy people, which thou broughtest out of the land of Egypt, have corrupted themselves;

8. They have turned aside quickly out of the way which I commanded them; they have made them a molten calf, and have worshiped it, and have sacrificed thereunto, and said, These be thy gods, O Israel, which have brought thee up out of the land of Egypt.

9. And the Lord said unto Moses, I have seen this people, and, behold, it is a stiff-necked people:

10. Now therefore *let me alone*, that my wrath may wax hot against them, and that I may consume them: and I will make of thee a great nation.

But Moses persisted!

11. And Moses besought the Lord his God, and said, Lord, why doth thy wrath wax hot against thy people, which thou hast brought forth out of the land of Egypt with great power, and with a mighty hand?

12. Wherefore should the Egyptians speak, and say, For *mischief* did he bring them out, to slay them in the mountains, and to consume them from the face of the earth? Turn from thy fierce wrath, and repent of this *evil* against thy people.
13. Remember Abraham, Isaac, and Israel, thy servants, to whom thou swearest by thine own self, and saidst unto them, I will multiply your seed as the stars of heaven, and all this land that I have spoken of will I give unto your seed, and they shall inherit it forever.
14. And the Lord *repented* of the evil which he thought to do unto his people.

Thus it appears that the judgment of the Almighty was *reconsidered*, and upon the re-argument of Moses was *reversed*.

Supported, Senators, by such precedents, I shall undertake to *show*, that the order passed by the court, declaring the articles of impeachment to be sufficient in law, was erroneous; and that the respondent was thereby deprived of the right of demurring thereto.

Before coming to that, however, let me consider some other questions arising in this case.

And, first of all, who is this respondent?—

It will not be pretended that there is any direct evidence of his guilt. The most that can be claimed is, that the evidence establishes certain facts or circumstances from which, perhaps, you may deduce the fact of guilt.

It is a well-settled principle of law, and a cherished maxim of religion, that when any fact is susceptible of two constructions, when any circumstance is reconcilable as well with the theory of innocence as with that of guilt, then such fact or circumstance is worthless to establish guilt. Legal presumption, equally with Christian charity, turns the even scales in favor of innocence. And in a case resting upon circumstantial evidence—where the fact of guilt is only an inference from other clearly established facts—the former character of the defendant, good or bad, is an important element.

A professional thief, escaping from the Five Points of New York, and charged with shoplifting in the city of Washington, would be convicted upon very slight evidence; because he would be presumed to be plying his vocation; while the same charge, made against a bishop of the church, could only be sustained by overwhelming proof.—In the first case the inclination of the jury would be to find the defendant guilty; in the latter, to demand irresistible testimony to overcome the presumption of innocence. In the one case, a single witness might suffice; in the other, a cloud of witnesses might be disbelieved.

This presumption of law is a result of human experience. It is rare, indeed, that a man reaches the meridian of life, possessing the confidence of his associates; and then, upon a sudden impulse, plunges headlong into the depths of vice and infamy. And it is still more rare, that from the depths of infamy and vice a mortal with one rebound can regain the upper air, and pursue a course of integrity and honor. And yet, if Belknap be guilty, he has performed this twofold miracle.

Mr. CLYMER'S investigating committee, when they had found, as they thought, one act of corruption in the Secretary of War, in the second year of his term, naturally concluded that innumerable other instances of corruption would be found in his long administration. Their logic was sound. So they have searched, examined and investigated the transactions of every branch and Bureau of the War Department, from Belknap's appointment down to the hour of his resignation. They have inquired into the expenses of his domestic life; have consulted his tailor, his butcher, and his grocer; investigated his bank account; and have pursued him in ways and by means never before resorted to. Yet the result is, that, except the matter under consideration, there is not a transaction in his entire administration upon which they can found even a censure.

If Belknap be guilty of the offense charged, then, by all the laws of probability, he had been led to it, his conscience stifled and his heart hardened by the perpetration of lesser villainies. It is from small pilferings and petty offenses that criminals advance, step by step, to the commission of crimes that shock the sense of a nation.

And if Belknap had become, as the managers claim, so debased, so regardless of the common maxims of honesty, as to pollute his hand with a bribe from Marsh, in 1870, it is impossible that he could subsequently have turned away from far better opportunities for corrupt aggrandizement.

In the single transaction of the sale of arms to France, Belknap might easily have made a million of dollars; and you will remember how certain Senators, full of suspicion and empty of charity, professed to believe that because he had the opportunity he must have improved it. An investigation by a select committee was ordered, and, after a searching and rigid inquiry, the committee, consisting of democrats and republicans, unanimously exonerated this respondent from any criminality in that transaction. That protracted investigation left no shadow upon his fair fame.

To suppose, then, that this respondent from a long and honorable career, pursued unfalteringly to the year 1870, turned suddenly upon all the pledges of his past life, became oblivious of all his domestic, social, and official obligations, and fell into the depths of moral depravity; that he rose thence, and casting aside all the corruption of mind and heart that had dragged him downward, lived thenceforth a pure and noble life, is to suppose something not within the range of probability; something against the teachings of all human experience;—a result only to be accomplished by miracle. To fall may be easy, but to rise from the depths is not so easy.

Facilis descensus Averni;
* * * *
Sed revocare gradum, superasque evadere ad auras.
Hoc opus, hic labor est.

The respondent's good character, and official purity since 1870 has been established by his enemies. Mr. CLYMER'S committee, after the most exhaustive investigation, are silent. Their silence is commendation; if they could censure, they would be swift to speak. So it only remains to consider what was his character prior to 1870.

The part the respondent bore during the war, is recorded history. Upon a former occasion I referred to the coincidence that the articles of impeachment were served upon him on the anniversary of the battle of Shiloh, and at the very hour of the day when, under the eye of General Grant, he moved into the line which made a successful stand against the fierce onslaught of General Beauregard, and turned the tide of battle in favor of the Union. This was the first time the great commander ever saw Belknap. General Grant never can forget the men whose bravery in the war for the Union attracted his attention. That day's work made Belknap Secretary of War. And as though to keep this matter fresh in the mind of the Senate, on Friday, July 7, (see CONGRESSIONAL RECORD,) the proceedings of this court were suspended, to pass a bill removing General Beauregard's political disabilities; and then the court resumed its proceedings, to determine whether it should impose political disabilities upon General Belknap.

The character of the respondent, from his boyhood to his appointment as Secretary of War, is established by the testimony of the Hon. Samuel F. Miller, one of the most highly esteemed justices of the Supreme Court, and Governor Lowe, ex-governor and ex-chief justice of Iowa; both of whom for nearly a quarter of a century had resided in the same town with him, and knew him intimately; and by both the Senators from his own State.—His character as Secretary of War has been established by heads of Bureaus in the War Department, through whom the details of his administration were executed. The Adjutant-General, Inspector-General, Judge-Advocate-General, Chief of Engineers, of Ordnance, the Superintendent of the Military Academy, Generals Hancock, McDowell, Pope, and Augur, have all testified to the energy, ability, and integrity with which he conducted himself in his high office. *Three hundred and thirty-seven millions* of dollars of the public money passed through his hands while he was Secretary of War, for every cent of which he has duly accounted.

Of course, where the proof of particular criminality is direct and positive, evidence of prior good character is unavailing. But where such direct proof is wanting, and where guilt or innocence must be spelled out from facts and circumstances, proof of character is an important element; *then* good character is the great rock upon which any defense must rest.

We have had a remarkable illustration of this very recently, in the case of Mr. KERR, Speaker of the House. And let me say, first, that I believe Mr. KERR is as honest a man as ever lived. I do not credit, in the slightest degree, the slanders that were set on foot against him; but truth justifies me in saying, that the testimony against him is twice as strong as the testimony here is against Belknap. The witness who swore positively to the payment of a bribe did not flee the country, as Marsh did; he remained under the flag and persisted and persists to-day in his statement. Cross-examination did not shake him. He had learned his story well. What did clear Mr. KERR in the estimation of the House and of all honorable men? Mr. KERR had not spent his days under a bushel. He was well known in his own State. He was known to the House; he was known throughout the country as a high-minded, upright man. And it was not to be tolerated, ought never to be tolerated, that a man of such repute and character should be blasted by the breath of a single scoundrel.—What was the result? The committee of the House of Representatives unanimously acquitted him; the House acquits him; the country acquits him.

There was one fortunate circumstance in Mr. KERR'S case. He was a democrat. My honest belief is that, had he been a republican, he would have been expelled the House unanimously. The democrats would have voted against him for the fun of the thing; the republicans, to *cleanse their party*.

The republican party has thus far survived under a practice that would break up any family in the land in twenty-four hours. Suppose a father, instead of remonstrating with a son for some slightly irregular conduct, should go upon the streets and denounce him. Suppose brothers, instead of defending their sisters against the breath of slander, should join in the cry and swell it to an uproar. Suppose all the little jars and ebullitions of temper occurring more or less often in every family, were to be recounted with all the exaggerations of malice; slight faults magnified, and harmless occurrences misrepresented;—how long would the family hold together, and how much of happiness would its members enjoy before its certain disruption?

If a democratic newspaper or committee of investigation assails a republican,—especially if he has been prominent,—instantly every republican newspaper, organization, and individual, declares the belief that he was *always* a rascal, and expresses profound amazement that the democrats had not found it out before. And so, under pretense of purifying the party, they join in one acclaim to cry him down forever,—*anything* to get rid of him. The democratic party has some sense; it washes its dirty linen at home. If one of its prominent members be assailed, a halt is called, and a patient investigation demanded. And all our republican editors, acting, apparently, upon the theory, that all the rascals are in the republican party, and all the republicans, except themselves, are probably rascals, take the part of the accused democrat, and demand a suspension of public

opinion until the accusation shall have been fully investigated and absolutely established. Thus the inculpated democrat has some chance of receiving at least some degree of justice. I do not complain of this. If our party cannot be just to its own members, I am glad its editors and politicians can be just to those who do not belong to it.

The Great Master commanded his apostles to be wise as serpents and harmless as doves. The republican party observes the latter, and rejects the former, clause of this precept; and while we are playing the part of the dove, the serpent is rapidly gliding toward the White House.

There is another suggestion. Impeachment, under our Constitution, is not designed to punish specific violations of statute law, but rather to protect the public against general maladministration in high public offices. And, therefore, when an officer is impeached, it is submitted that he should not be convicted and removed from office, degraded and disgraced, for a single transaction, provided the general tenor of his administration is commendable. There is a passage in one of the arguments of Erskine so appropriate to my purpose that I will send it to the Secretary to be read. In the trial of John Stockdale, for libel; the attorney-general produced before the jury a volume of several hundred pages, from which he read to the jury marked passages here and there—sometimes with intervals of forty or fifty pages—and asked the jury upon those passages to convict the writer of the book of libel. Mr. Erskine claimed that the whole volume should go to the jury, and that they should determine from the whole volume, and not from a few passages here and there, whether the book was written with good or bad intent. He said:

One word more, gentlemen, and I have done. Every human tribunal ought to take care to administer justice, as we look hereafter to have justice administered to ourselves. Upon the principle on which the attorney-general prays sentence upon my client—God have mercy upon us! Instead of standing before him in judgment with the hopes and consolations of Christians, we must call upon the mountains to cover us; for which of us can present, for omniscient examination, a pure, unspotted, and faultless course? But I humbly expect that the benevolent Author of our being will judge us as I have been pointing out for your example. Holding up the great volume of our lives in His hands, and regarding the general scope of them: if He discovers benevolence, charity and good-will to man beating in the heart, where He alone can look; if He finds that our conduct, though often forced out of the path by our infirmities, has been *in general* well directed, His all-searching eye will assuredly never pursue us into those *little corners* of our lives, much less will his justice select them for punishment, without the general context of our existence, by which faults may be sometimes found to have grown out of virtues, and *very many* of our *heaviest offenses to have been grafted* by *human imperfection* upon the best and kindest of our affections. No, gentlemen, believe me, this is not the course of divine justice, or there is no truth in the gospels of Heaven. If the general tenor of a man's conduct be such as I have represented it, he may walk through the shadow of death, with all his faults about him, with as much cheerfulness as in the common paths of life; because he knows, that instead of a stern accuser to expose before the Author of his nature those frail passages, which, like the scored matter in the book before you, chequers the volume of the brightest and best-spent life, His mercy will obscure them from the eye of his purity, and our repentance blot them out forever.

All this would, I admit, be perfectly foreign, and irrevelant, if you were sitting here in a case of property between man and man, where a strict rule of law must operate, or there would be an end of civil life and society.

Senators, there never was a case where this eloquent language was more applicable. It is conceded that the object of impeachment is not punishment, but protection to the public. Can you, as Christian gentlemen, say that the public safety requires that, for a single transgression, even if you find it clearly proved, which I shall attempt to show is not the case,—can you, for the blot of a single day, in a long and otherwise spotless life, full of gallant action, and upright administration in high offices and public trusts, brand this man as infamous before the world?

Take the case of General Jackson at New Orleans. Suppose him to be impeached and on trial to-day for the arbitrary arrest of a Federal judge; and suppose that able lawyers had demonstrated to your entire satisfaction that the arrest of the judge was an illegal act;—would you shut your eyes to the fact that this illegal act was only one step in a brilliant military campaign which saved New Orleans from the devastation of the foe, and shed immortal luster upon the American name and nation?—And would you select this single act, and base upon it a general condemnation, to render infamous a name otherwise most illustrious?

And yet, I submit, that the principle which would justify the conviction of General Belknap in this case, for a single transaction in an otherwise blameless administration of the War Department for seven long years, would justify the conviction of Jackson in the case supposed. Such a rule of judgment is in opposition to every principle and sentiment of Christian charity; it is consistent only with the bigotry, the intolerance, and the cruelty, which the religion of Christ was intended to abolish.

But, Senators, if I have pressed the argument too far upon this point, may I not fall back within recognized legal lines, and still insist that, in a case like this, where it must be admitted there is no direct proof of guilt, the circumstances relied upon to raise an inference of guilt should be critically scanned, and the whole case rejected unless there is a moral certainty of guilt?

Now what is the theory of this prosecution? That it is a case of bribery; that Belknap accepted a bribe from Marsh.

The honorable manager, Mr. LYNDE, has referred us to section 1781 of the Revised Statutes, which, omitting immaterial words, provides as follows:

Any officer who, directly or indirectly, receives or agrees to receive any money &c. for giving an office or place to any person whatever, shall be guilty of a misdemeanor.

Also the section in regard to bribery of officers, which is section 5501:

Every officer of the United States * * * who asks, accepts, or receives any money * * * *with intent to have his decision or action* on any question, matter, cause, or proceeding which may, at any time, be pending, or which may by law be brought before him in his official capacity, *influenced thereby*,

shall be deemed guilty of a misdemeanor.

These sections are *in pari materie*, and must be construed together. They define and punish the crime of bribery. Greenleaf, abridging the English authorities, defines bribery of an officer to be receiving an undue reward, *in order to* influence his behavior in office, and incline him to act contrary to the known rules of honesty and integrity. And he cites 3 Coke's Institutes, 145; 4 Blackstone's Commentaries, 139; 1 Russell on Crimes, 154; and Hawkins's Pleas of the Crown, 67.

The language of section 1781 Revised Statutes, "Any officer who directly or indirectly receives or agrees to receive any money, &c., for giving an office," &c., evidently contemplates what section 5501 more clearly expresses, namely, that the money shall be given or promised before, or simultaneously with, the giving of the office.

The statutes against usury provide that any person who shall take or receive, for the loan of money, more than a certain per cent., shall forfeit, &c. If I borrow of my neighbor $10,000, at a legal rate of interest, and subsequently pay him principal and interest; and after the transaction of loan is completely closed, I say to him that by the investment of the money borrowed I made $10,000, and offer to give him, and he receives, one-half of the profits made by me, it would not be pretended that such gift and receipt constituted a violation of the statute against usury. The two sections read together, and in view of the definition of bribery at common law, can only be considered as providing for the case where money is received by the officer, *with the intent* that his official conduct shall be influenced thereby. And to this end, of course, the payment or promise of payment must be made before official action is taken.

Again, bribery may involve the person who gives the money and the officer who receives it; or it may involve the person who gives it and not the officer who receives it; or it may involve the officer who receives it and not the person who gives it, and this point I wish to present distinctly, because the manager the other day maintained exactly the opposite theory. Mr. JENKS yesterday maintained that whether Mr. Belknap was guilty of being bribed or not depended upon the intent and purpose with which Marsh had given him the money. *That is not the law.* We have two statutes, sections 5450 and 5451, punishing the giver, and sections 5500 and 5501, punishing the receiver, of a bribe. The statute against giving a bribe provides that if any person shall give money *with intent* to influence the officer, &c. The intent here mentioned is of course the intent of the giver—he may be indicted, without charging that the officer who received it received it with any guilty intent. His crime is complete when he has given the money, with his own intent that that money should influence the action of the officer. So when an officer is indicted it need not be charged in the indictment that the giver intended thereby to influence the officer's conduct. It must be charged in the language of the statute that the officer received it *with the intent* to have his mind thereby influenced; for that is the language of the statute.

This I deem an important distinction; and one great error of the argument of the manager yesterday resulted from his ignoring this distinction. The *mere* giving of money by Marsh to Belknap was entirely innocent. But if Marsh gave it for the purpose of influencing Belknap's official conduct, then Marsh is guilty of bribery. But Belknap is not guilty of bribery, unless he received the money with the intent and for the purpose of having his official conduct influenced thereby.

The burden is upon the prosecution to show that Belknap, when he received the money, received it with the intent and for the purpose of having his official conduct influenced thereby. And this must be proved beyond a reasonable doubt. I need not stop here, as I should if addressing a jury, to show what the law means by the phrase, "reasonable doubt." This phrase is merely the legal expression of that maxim of Christian charity inculcated in the gospels. If, under all the circumstances, it is as probable that the respondent is innocent, as that he is guilty, charity requires you to find him innocent. So the law says this charitable presumption, the impulse of the heart to think well of all men, must be clearly overcome by proof before there can be conviction: and this is all the phrase means. The prosecution must establish beyond reasonable doubt that Belknap not only received the money directly or indirectly; but that he received it *with the intent* of having his official conduct influenced thereby.

For the purpose of bringing this point still more distinctly, if possible, before your minds, let me read the statute again:

Every officer * * * who asks, accepts or receives any money * * * *with intent to have his decision or action* on any question, matter, cause, &c., *influenced thereby* is guilty of a misdemeanor, &c. (Revised Statutes, section 5501, page 1072.)

I need not stop, addressing a body of lawyers, to show that where the statute makes the intent an integral and essential part of the offense that the intent must be established as plainly and clearly as the act itself. You must not only find the receipt of the money, but you must be able to say that you believe that when Belknap received it he received it with the intent that his official conduct should be influenced thereby. I submit to every lawyer that upon this statute no indictment could stand a minute that did not charge such intent.

And although equal strictness of pleading be not required in impeachment cases, the statement of every essential element of the offense is necessary, and not only must it be stated, but it must be proved. You must be able to say that you believe this man received this money, and not only that but that when he received it, he did so, meaning and intending that in consideration of the money, he would act officially otherwise than he would, had he not received the money. I do not believe there is a Senator in this Chamber who believes that Belknap's official action was influenced, or that he intended it should be, by this money.

It may be said this is holding very strictly to the statute. That is my duty, and it is your duty. All penal enactments are to be strictly construed.

The Senate of the United States, in the exercise of this which Blackstone declares is an "awful jurisdiction," cannot go shuffling and ambling in editorial style through these statutes. There must be exact description of offenses, couched in definite, legal language, or there is no charge to stand in a judicial tribunal. And it is as necessary that the articles should charge, and the evidence show, that Belknap received the money *with the intent* mentioned in the statute, as that he received the money at all. If Belknap received the money with this intent, he is guilty of bribery. But, if he received the money without this intent, he is not guilty of bribery. And in determining with what intent Belknap received the money, it is wholly immaterial what was the intention of Marsh in giving it.

Now, Senators, let me remind you how important is this distinction to all public men. I invoke it not for Belknap's sake only, but for the sake of justice, and for the sake of every man holding high civil office.

We all know how differently different classes of men are affected by the influence of money. Some men will commit murder for five dollars; some for a thousand dollars; and some not at all. Some men would think a box of cigars would influence a Senator, and might present it in that expectation. On their part it would be bribery. But the Senator might accept the present because he would think it mere coxcombry of honesty to decline it. But he would never think of being influenced in the discharge of his official duty by any such present. In other words, he would not accept it with the intent to have it influence his official action.

Take another subject, which has been somewhat discussed, that of railroad passes to public men. There is no reason to suppose that railroad companies send passes to legislators out of mere compassion for their scant salary. If such were their motive, they would send them to all *poor* men; and would not discontinue them when the legislator *failed* of *re-election*. Gas companies, existing subject to legislative control and supervision, and constantly complained of by the people to the Legislature, do not illuminate the houses of legislators gratuitously from mere love of illumination; if so, they would light up every shanty within their reach; and gas-meters would be superfluous.

These corporations doubtless expect favors to result from their ostentatious accommodations. But do the public men who receive gas bills receipted, annual railroad-passes, horse-railroad slips to be punched by the conductor, and dead-head stamps from telegraph companies, receive the same with intent to have their official action influenced thereby?

You all remember the grave joke perpetrated by Nicholas Hill in the court of appeals of New York, who said, in the argument of a cause against a railroad company before that court, that if the corrupting power of such corporations was allowed to go on for a few years, it might chance that an advocate would be compelled to argue a cause against a railroad company, before a court, every member of which might have the company's pass in his pocket.

There was published in the New York Tribune some time ago an extract from a telegraph company's report to its stockholders; an extract from which was as follows:

> The franks issued to Government officials, constitute nearly a third of the total complimentary business. The wires of the —— Company extend into thirty-seven States and nine Territories, within the limits of the United States and into four of the British provinces In all of them our property is more or less subject to the action of the *national*, *State*, and *municipal* authorities; and the *judicious* use of complimentary franks among them, has been the means of saving to the company *many times* the money value of the free service performed.

This is a plain confession that dead head stamps are issued in expectation of official favors, and a declaration that the expectation has been realized. But who will say that the public men who have been the recipients of such courtesy, received the stamps with the *intent* to have their official conduct influenced thereby?

And I invoke at your hands for General Belknap the distinction which these instances mark between the *intention of the giver* and the *intention of the receiver* of such courtesies. If the giver intended by the gift of stamps to influence the conduct of a Senator, he committed bribery. But if the Senator who received the stamps did so without intending to be thereby influenced in his official action, he was not guilty of bribery.

And I defy the honorable manager who is to close this case to convict General Belknap upon the *intention* of Mr. Marsh. Before the respondent can be convicted you must find that he received the money with *intent* to be thereby corrupted, and have his official conduct influenced and corrupted. If you *can* find such intent from the testimony, this man can be convicted, and without that he cannot be convicted. He may be slaughtered and sacrificed; but he cannot be judicially convicted. There is not a lawyer in the Senate who, sitting upon the bench and charging a jury, would not charge that the law is in substance as I have stated it; that before they could find Belknap guilty they must find that he received the money *with intent* to be *thereby influenced* in the performance of his official duty. I have dwelt upon this point and repeated it so often, because it is a vital point in this case.

Before proceeding to an examination, necessarily brief, of the evidence in this case, let me state what I understand to be the philosophy of a trial by one's peers. There is no phrase in the English tongue more cherished by Englishmen than that every man shall be tried by his peers. Thousands of Englishmen who have not the slightest idea of the meaning of this phrase, would draw their swords and imperil their lives against anybody who should question it. It is an outgrowth of the proverb, "One half of the world does not know how the other half lives."—Give me the power at present possessed by United States marshals to pack juries—a power unlimited—and I would pack a jury in any State of this Union, who would convict a person charged with living in such extravagance as to corrupt the public morals, on proof that he expended $3,000 a year. I would take care to select men who never received or expended over $500 a year—men who never saw a steamboat or a railroad—men who never left the patch of ground they cultivate except on horseback—men who never visited a city, and know nothing of the expenses of living out of their own class and circle. I could pack a jury in this way who would find any man guilty of wasteful prodigality, whose expenses amounted to $3,000 a year. Hence the importance of being tried by one's peers; by those whose habits of life, whose theories, sentiments, and associations, accord with your own. Madison, in the Federalist, justified the selection of the Senate to try impeachments, upon the ground that impeachments would lie only for the offenses of public men; and Senators being public men would be the best judges of such cases.

A man's reputation is fixed by the opinion of his own class. When a lawyer loses his standing with the members of the bar, he is lost, no matter what farmers may think of him. As long as he maintains his standing with his own class he is safe, no matter what somebody else may think of him. This is true of all ranks of human life. Every class can judge of the circumstances and criticise correctly the conduct of one of its number. But whoever goes out of his own class, either above or below it, is incapable of judging correctly under the new and strange circumstances which surround him.

Senators, I rejoice that my client is on trial before his peers; before men versed in public affairs; familiar with the circumstances which surround public men; acquainted with their modes of proceeding, their manner of living, and all that should enter into correct judgment in this case. And, as such, I appeal to you to say, whether from all the circumstances given in evidence, *and in the face of direct evidence* to the contrary, you can say that you really in your hearts believe that Belknap's conduct was at all influenced, or that he ever *intended* that it should be, by the money given by Marsh.

Coming now to consider the evidence against the respondent, let it always be borne in mind that there is, not only *no direct evidence* to establish the offense charged; but that the direct evidence of Marsh and Evans, the only competent witnesses who have absolute knowledge upon the subject, *is exactly the other way*.

Marsh, the principal witness for the prosecution, without whose testimony not one of the managers would pretend there was the slightest case made, was examined by them in a manner which betrayed the weakness of their cause. If there was any corruption in the transaction, he knew it, and could testify to it. But the managers did not, durst not lead him toward the body of the crime; did not put a question to bring out his testimony upon the main point of the case. They confined him carefully and strictly to the proof of sending money, and other detached circumstances; and discreetly avoided asking him any question to establish a guilty *intent*. They knew they would destroy their case, if they did so; they knew Marsh would testify to a state of facts that would acquit Belknap. When we urged them to push their witness away from shore, and direct him to the vital points of the case, they replied that they knew their side of the case better than we did. Not a bit of it. We knew they had no case; and that is all they knew. They knew their best policy was to get as little of the truth before the Senate as possible; and they were quite successful, so far as *their* examination of Marsh was concerned. And they submitted their case, without a word of *direct* evidence as to whether Belknap did, or did not, receive the money sent, with the intention mentioned in the statute. But the managers resorted to proof of disconnected circumstances, from which they hoped the Senate might infer the *essential* fact,—guilty intent.

They say Belknap did not appoint Evans upon his own application, although he was well recommended; but did subsequently appoint him, at the request of Marsh.

To this we reply: First, Evans had no lien on the office or claim to the appointment. The act of Congress authorizing the Secretary of War to appoint post-traders, did not require him to appoint those already engaged in the business, though well recommended. Belknap was therefore under no legal obligation to appoint Evans; and his refusal to do so was only the exercise of a discretion vested in him by law: and therefore not a subject of complaint, much less of indictment or impeachment. And again, the application of Evans stated

that he contemplated a copartnership ith one Durfee, who was already interested in three or four other aderships. And this the Secretary thought a sufficient reason for not appointing Evans and so establishing Durfee in another tradership.

Again, the managers say, the reservation was enlarged, and thus Evans was benefited. And this, they say, is a suspicious circumstance. Another, they say, was that Evans was the only trader allowed to remain at Fort Sill; and this secured him a monopoly of the trade there.

And again, certain orders were made by the Secretary of War in regard to the sale of liquor at Fort Sill, which were beneficial to Evans.

I concede that if these favors had been granted to Evans, and not to other traders, and had not been fully explained by evidence on the part of the defense, they would have been slight, yet very slight, evidence that some special relations existed between Belknap and Evans or Marsh. But all these circumstances have been so fully explained that they are swept out of the case, and have no value whatever, as evidence.

Now as to the enlargement of the reservation. We have given in evidence the records of the Department, which show that the recommendation for this came through the regular military channels. General Pope, the commander of that department, recommended such enlargement in a communication to the Adjutant-General; who, in laying the matter before the Secretary of War, suggested that the Interior Department ought to be consulted, because the enlargement might affect the rights of certain Indian tribes. Thereupon the matter was referred to the Secretary of the Interior, who referred it to the Commissioner of Indian Affairs. The Commissioner examined the matter, and reported to the Secretary of the Interior that there was no objection to such enlargement. The Secretary of the Interior communicated this report to the Secretary of War; who thereupon approved the recommendation of General Pope, and referred the matter to the President, with whom the power of ultimate decision resided. And the President ordered the enlargement to be made. All the records and correspondence upon this subject we have given in evidence, and they are a part of this record; and conclusively show that the Secretary of War treated the matter in the regular routine of business; and is no more responsible for the enlargement of the reservation than any of the officials who acted upon the subject. And there is not a word of proof, nor a pretense from any quarter, that the enlargement of the reservation was improvidently or unwisely ordered.

Now as to the liquor business.—The correspondence and records are all before you, and speak for themselves. Every order made by the Secretary was in words made subject to the approval or disapproval of the commandant of the post; who *was*, as the Secretary was *not*, acquainted with the circumstances and the propriety of granting the license applied for. And Evans himself testifies that these are the only matters which he ever made the subject of request to the Secretary of War. Evans testifies, also, that he never received any indulgence, protection, or favor, not granted to post-traders everywhere; and that he never suspected, until recently, that Belknap had received, or was receiving, a cent from Marsh.

In regard to Evans being the only trader at Fort Sill, it is established by evidence of Evans, and of Crosby, chief clerk of the War Department, that this was the universal rule, and that there are to-day but two posts in the United States—and both these in the State of Texas—where more than one post-trader is allowed; and, in those instances, for exceptional reasons.

A great deal has been said by the press about Belknap's confession. The people believe that when he went before the committee, and heard Marsh's testimony read, he broke down completely, confessed guilt, tendered his resignation, and left the War Department, wringing his hands, and crying like a child. Now of all this not one word is true; but truth is not essential to a sensational newspaper writer. The most stolid correspondent can state facts and tell the truth. But your *brilliant* correspondent must exercise the creative faculty. Out of the commonest occurrences of the day it is his *role* to produce narratives full of tragedy and pathos, of the wonderful, the romantic, and sometimes, when in the vein, of the comic. Generally he seems to prefer the tragic vein. And all this trash finds plenty of readers and believers. The managers, recollecting, no doubt, the effect produced upon the public mind by this newspaper extravagance and falsehood, and hoping, perhaps, that it had some lodgment in this Chamber, made a formal offer of the testimony of Marsh before the investigating committee;—testimony not given in Belknap's presence, and upon which the witness had not been subjected to cross-examination.

It is a well-settled rule of law that what a witness has testified to before another tribunal, or upon a former occasion, is only admissible as *secondary* evidence, where the witness is dead or beyond the jurisdiction of the court. Marsh had been examined in this case, and was in fact in the Chamber, when the managers offered in evidence his testimony before the investigating committee of the House. Against our objection the Senate admitted this *ex parte* testimony; the managers representing that they wished to read the evidence for the purpose of showing what Belknap said when it was read to him. Very well;—what did Belknap say?—He said, "Some things there are true, some are false, and some I know nothing about."—Simply this, and nothing more. And this is the sole foundation upon which the press has reared its remarkable structure as to confessions of guilt, &c., &c. He did not say what parts of it were true, what parts false, or what parts he knew nothing about. Is not that a remarkable basis upon which to ask a man's conviction? Such strategy is beneath contempt.

Having disposed of all the small circumstances which only by the utmost extravagance can be claimed to be probative facts, let me refer to some lesser things which might affect a suspicious mind.

November 2, 1871, complaints having been made that an unauthorized amount of liquors had been brought upon the reservation, the Secretary of War addressed a letter to Evans, informing him of the charge and inquiring as to the fact. Afterward on the 8th of November, the Secretary wrote to the Solicitor of the Treasury, in answer to an inquiry upon the subject, that Evans denied the truth of the charge, and that no complaint had ever been made against him by the military authorities at Fort Sill.

Now say the managers, it is impossible that the Secretary could have received from Evans, prior to November 8, an answer to the Secretary's letter of November 2. Therefore the Secretary was volunteering a defense for Evans. But Mr. Evans swears that he was in the East, and received a telegram from his agent at the reservation, and came to Washington and saw the Secretary upon the subject, before receiving the Secretary's letter of November 2. And the letter of Grierson, commandant of the post, (RECORD, page 147,) fully exonerated Evans, and stated that he had acted under military authority. And thus this momentous circumstance is disposed of.

The managers suffered another scare from an equally trivial circumstance. Marsh wrote to General Belknap, asking that the appointment which the Secretary had promised him should be made out in the name of Evans, and sent to him, Marsh, at New York. Evans's formal application and recommendations were in the files of the Department, and Mr. Crosby, who had charge of the correspondence of the Secretary at that time, placed Marsh's letter in the file of the Secretary's personal correspondence. This he did without any direction from General Belknap; and Crosby testifies before you that this disposition of the letter was in due and regular course of business in the Department. After the Secretary resigned, this file of personal letters and all his individual papers were sent to his residence. The managers thought, from not finding this letter on the *official* file, there must be something wrong about it. They therefore gave us notice to produce it; we did produce it, and it turns out to be as innocent a letter as ever passed through the mail. Besides, the substance of the letter appeared upon the register relating to post-traderships in the Adjutant-General's Office; and had been communicated to Congress by the Secretary himself weeks before these troubles commenced, at the request of Mr. CLYMER'S committee.

In the first place, there was nothing in the letter to be concealed; in the second place, nothing in it had been concealed, but its substance was of record in the Department and had been communicated to the House of Representatives. And on their notice we produced it to go in evidence.

Mr. HOWE. Mr. President, I should like to call the attention of the counsel to a point which I understood to have been made yesterday by the manager summing up for the prosecution: that the appointment of Mr. Marsh could not have been induced by the courtesies shown by him to the wife of the Secretary during her sickness, because she was not sick in fact until after the appointment was promised.

Mr. CARPENTER. There is a discrepancy in the testimony of Marsh which the managers, with singular ingenuity and injustice, attempt to turn against us. Marsh is their witness, not ours; and we have no interest in clearing his testimony of discrepancies, contradictions, or doubts. And in remarking upon this subject I am merely doing what every person has a right to expect from an honest enemy. Marsh had testified that the subject of this tradership was first mentioned to him by Mrs. Belknap, during her illness at his house in New York, which was in September, 1870. In this he was certainly in error; because the records of the Department show a letter from Marsh, dated August 16, 1870, as follows:

No. 51 WEST THIRTY-FIFTH STREET,
Tuesday, 16th August, 1870.

Genl. W. W. BELKNAP.

MY DEAR SIR: You will remember my application to you in Washington a few days since for an Indian tradership. Following your suggestion I wrote to a friend in Kansas, and yesterday received a reply. My friend advises me to apply for Fort Sill and Camp Supply. He says also that he is informed that the latter post is to be abandoned, and the supplies concentrated at Fort Sill, but that you will know the facts in regard to this rumor. If true, it will be only worth while to apply for the fort. *This post was not mentioned by you as among those already promised, and I venture to hope has not been.*

I write to you at once, so that in case it is yet free my application may be filed.

I shall send to Ohio immediately for the recommendations of Senator SHERMAN and Representative Stevenson, which I can secure without trouble, and as soon as received will send a formal application.

Please reserve the two posts if possible.

I am, very truly, your obedient servant,

C. P. MARSH.

P. S.—*If these posts have been promised* I shall be much obliged if you will inform me at your earliest convenience.

This letter shows that Marsh was in error when he testified, and also shows that the manager was in error the other day, when he declared that it was shown by this letter that the Secretary had promised the appointment to Marsh before the date of the letter. The letter

shows exactly the reverse, namely, that Marsh had not thought of Fort Sill at the time of his prior interview with the Secretary; and that the object of the letter was to ascertain whether that appointment had been promised at the date of the letter.

The truth is this. Marsh had applied for the tradership, but it certainly had not been promised to him before Mrs. Belknap's illness at his house. Prior to that it remained on file like a thousand other applications for appointment; and might never have been acted upon. It was, undoubtedly, the friendly feeling of Mrs. Belknap, inspired by the kindness shown to her at Marsh's house, that secured the promise of Marsh's appointment; and Marsh so regarded it. It is therefore not remarkable that Marsh should have forgotten, after the lapse of six years, the first application for the appointment which produced no result. He knew that he owed the place to the grateful feeling and effective intercession of Mrs. Belknap. So the substance of Marsh's testimony is true.

Another remark has been made upon this letter. It is indorsed in the Secretary's handwriting, "Received August 16; file official." This indicates that this letter was in the hands of the Secretary on that day. The chief clerk of the Department testifies that, according to the best judgment he can form from the fact that no letters were signed by the Secretary in the Department, from the 12th of August to the 2d of September, and his mail was forwarded to him at different points during that period, the Secretary must have been absent from Washington all that time. He has no recollection upon the subject apart from these circumstances. The Secretary was at that time making his tour of inspection of forts and arsenals; and he may have run into Washington unexpectedly, and have been in his office a few hours on the 16th of August. Or the letter may have been handed to him in New York on that day, indorsed as stated, and sent to the Department by mail. At all events, it is in evidence and not disputed, that Marsh's letter of August 16, and Evans's application of August 18 reached the Adjutant-General's Office September 23, 1870, and have been there ever since; and Evans's appointment was not made until October 10, 1870. What there is in all this, material to this case, I am unable to see.

The managers have pretended that Marsh was really appointed on the 16th of August. It is surprising that a man could be member of Congress long enough to be one of these managers, and yet utterly ignore the distinction between an *application* for an office and an *appointment* to it. If no such distinction existed, many a clever fellow I know would be happy before midnight.

This disposes of all the circumstances relied upon as probative facts, and everything which the managers regard as suspicious. And I assert with the utmost confidence, that up to this point nothing has been shown which any sane judge or jury would regard as tending, in even the slightest degree, to establish the guilt of the respondent, or cast the slightest suspicion upon his integrity.

And now, leaving the twilight of circumstantial evidence, the field of speculation and conjecture, let us consider for a few moments that part of the case to which the direct and positive proof applies. And let it be borne in mind that the only persons who had actual knowledge of this transaction were General Belknap, his former wife, Mrs. Bower, his present wife, Marsh, and Evans. They alone could give positive testimony. The former Mrs. Belknap is in the grave; the then Mrs. Bower is the present Mrs. Belknap, and she and General Belknap are incompetent witnesses. So that to-day the only competent witnesses, possessing actual knowledge, and capable of giving direct evidence, are Marsh and Evans; and by the testimony of these two witnesses this case must be determined, because they alone can swear whether or not the respondent received this money *with the intent* necessary to make the transaction criminal.

I shall now refer to their testimony, in a way to give an account, in the order of time, of the appointment of Evans and all subsequent material facts.

Evans testifies that he was introduced to the Secretary at Keokuk, Iowa, but had no conversation with him upon this subject. That, subsequently, he called upon the Secretary in Washington, and had a conversation with him upon the subject of this appointment; and that the Secretary informed him that the appointment had been given or promised—the witness is uncertain which—to a friend of the Secretary; and in the same conversation he learned that friend was Marsh.

The theory of the managers is that the Secretary and Marsh combined to compel Evans to pay the sums of money which Evans actually did pay to Marsh, and that such payment should be divided between the Secretary and Marsh. Let us see whether this theory is supported by the evidence.

If this theory were true, we should expect to find the Secretary urging Evans to make an arrangement with Marsh to that effect. Now what is the testimony?

Evans testifies—not that the Secretary opened the subject to him—but that he opened it to the Secretary, informing him of his investments there and the losses he must sustain unless Marsh would buy his stock. To repeated questions by me, whether the Secretary asked, or urged, or advised him to go and see Marsh, he said, distinctly, he did not; but that, in reply to his inquiry whether the Secretary did not think he could form a partnership with Marsh, the Secretary said he did not know whether Marsh intended to run the post himself or not; that Marsh would soon be in town, and the witness could see him on the subject.

Mr. Marsh swears that he came to Washington at the time he was expected, and saw the Secretary of War; that the Secretary had just seen Evans; and now what does the Secretary say to Marsh? I read from the RECORD, page 164, the testimony of Marsh the chief prosecuting witness:

He—

Belknap—

said he would appoint me to this place, post-trader at Fort Sill, I think, and he then told me that I had better go and see Mr. Evans; that he was in the city and an applicant for re-appointment; and that if I was to run the post myself I think he said I ought to make an arrangement with him to buy out his stock of goods and his buildings, because it would not be fair to turn him out of his position without buying out his stock and buildings; it would ruin him, or something of that kind, and he would not consent to it.

Here is the Shylock who in an hour has sunk from the highest estate to the deepest infamy, who has formed the determination to take bribes, plunder the soldiers and commit every kind of iniquity; dealing with his co-conspirator, and telling him that he will not appoint him to that place unless he buys out the stock and buildings of Evans. Look at it. How does this square with the theory that Mr. Evans was to be plundered for the joint benefit of the respondent and Marsh? Their theory is that Marsh who did not wish to go there was to be appointed, and then they were to compel Evans to pay a large sum for the place. This testimony given by Marsh, the chief witness of the prosecution, utterly controverts and destroys their theory. Marsh says the respondent told him that he would not appoint him, unless he would deal justly with Evans, and make a purchase of the stock and buildings which belonged to Evans; that it would not be fair to do otherwise; that it would ruin Evans; and he would not consent to it.

Senators, I ask you whether that was like the hardened wretch they would have you believe the respondent, in the twinkling of an eye, had become; or like a gentleman, the head of a Department, a man holding a high position and conscious of the responsibilities belonging to it? That is the testimony of the two men, and the only two men, who know anything about it; Evans saying that the respondent manifested sympathy for him under the circumstances.

Senators, let me pause here, and claim for my client the benefit of trial by his peers. Has no Senator in this Chamber said to a friend who has applied to him for recommendation to office, "I am sorry you did not come earlier; I have already made a recommendation for that place, and cannot recall it; but if I had known all the facts I would have done otherwise?"

The Secretary had promised the appointment to Marsh. But when he came to learn the situation of Evans, he resolved that Marsh should do full justice to him or he would not appoint Marsh.

You all know how frequently such things occur with public men.

I appeal to you, Senators, to say whether this testimony supports the theory of the prosecution. Does it not completely overthrow it; and show the Secretary to have acted justly, between Marsh and Evans. The Secretary interferes, not to help Marsh plunder and ruin Evans, but insists that Marsh shall do justice to Evans; or otherwise he shall not have the appointment. It is impossible so to pervert facts, even to the most prejudiced mind, as to make this part of the transaction appear otherwise than just, kind and honorable on the part of the Secretary. He had indeed promised the appointment to Marsh, but he was nevertheless determined to compel Marsh to deal justly with Evans; and if he would not, to withhold the appointment. Was this the course of a man interested in practicing extortions upon Evans? Every candid mind must declare the reverse.

Neither Marsh nor Evans had a second interview with the Secretary before the appointment of Evans. Let me repeat, Evans's anxiety as expressed to the Secretary was for a partnership with Marsh. And the letter written from Marsh, asking the appointment to be made in the name of Evans, was calculated to lead the Secretary to believe that such arrangement had been made. The letter was as follows:

No. 51 WEST THIRTY-FIFTH STREET,
New York City, October 8, 1870.

DEAR SIR: I have to ask that the appointment which you have given to me as post-trader at Fort Sill, Indian Territory, be made in the name of John S. Evans, *as it will be more convenient for me* to have him manage the business *at present*.

I am, my dear sir, your very obedient servant,

C. P. MARSH.

P. S.—Please send the appointment to me, 51 West Thirty-fifth street, New York City.

Well, the appointment is made in the name of Evans.

Evans has testified most positively that he never paid the Secretary, directly or indirectly, a cent for his appointment. That the contract he made with Marsh he understood to be a business transaction between himself and Marsh; and that he did not understand, when he entered into the contract, that the Secretary had or was to have the slightest interest in it.

This positive, uncontradicted, and unquestioned testimony of Evans reduces the case to this single question, Was there such arrangement, understanding, and agreement between the Secretary and Marsh?—And let me repeat, Marsh is the chief witness of the prosecution, without whose testimony there is no case; and reminding you of the legal maxim in relation to witnesses, canonized by ages of judicial experience, *Falsus in uno falsus in omnibus*, let me turn to the RECORD and read you the questions I put to Mr. Marsh and the answers he gave:

"Question. Was there any agreement on your part to pay Mr. Belknap any money in consideration that he would appoint you post-trader at Fort Sill?

"Answer. There was not.

"Q. (By Mr. CARPENTER.) At any time?

"A. At any time.

"Q. Was there ever any agreement between you and Mr. Belknap that you should pay him any pecuniary consideration for or in consideration of his appointing Mr. Evans post-trader at Fort Sill?

"A. There was not.

"Q. Was there ever any agreement between you and Mr. Belknap that you would pay him any money or other valuable consideration in consideration of his continuing Mr. Evans as post-trader at Fort Sill?

"A. Never.

"Q. So far as you know was not the only inducement leading to that appointment the kindness which you and your wife had shown to Mrs. Belknap at your house?

"A. That certainly had a great deal to do with it, I presume.

"Q. Did you make or claim to have any bill against him for anything done for Mrs. Belknap?

"A. No, sir.

"Q. Your treatment of her was entirely gratuitous?

"A. Yes, sir.

"Q. But of course led to a feeling of friendship between the families?

"A. Yes, sir.

"Q. You say that the friendship which arose from the fact that Mrs. Belknap had been sick at your house, and been kindly treated, had a great deal to do with that appointment; was there, apart from that friendly feeling, any consideration moving from you to Belknap to procure that appointment?

"A. None."

If this testimony is true, it ends this case. If not true, it is willfully and corruptly false. Marsh must know whether there was or not any agreement in this behalf between the respondent and himself, and it is well-settled law, that if a jury believe that a witness has committed willful perjury, in one part of his testimony, they are at liberty to disregard his testimony altogether.

Now, Senators, let me appeal to you, upon your honor and your conscience,—for that is where the case must rest,—whether in a case like this, where every supposed criminating circumstance is fully explained, and every ground for suspicion is entirely removed; and where the only direct testimony, and that, too, from the chief prosecuting witness, fully and fairly and absolutely contradicts all presumption of criminality, can you convict this respondent? Upon what can a conviction rest? Every circumstance relied upon for inference of criminality, fully explained, every ground of suspicion removed, the only direct evidence in the case completely acquitting the respondent of any criminal intent, corrupt agreement or purpose,—how are you to find him guilty?

You are sworn to judge in this matter impartially and according to law. You cannot fall back upon misguided public opinion, nor upon the clamor of the press. No matter what the people believe, no matter what the press declares, *what* does the proof establish?—For your judgment in this case you must answer,—not to editors—not to the excited and misled people—but to God, who is truth itself.

The testimony of Marsh in this particular, which, if true, acquits the respondent, is completely corroborated by the testimony of Evans, who swears that in all the dickering and higgling between him and Marsh, as to the sum which Evans should pay, Marsh never once suggested, nor even remotely hinted, that what he was to receive from Evans was to be divided by him with the Secretary or any other person.

We all know that men obtain substantial livelihood in Washington by pretending to sell the votes of Senators with whom they never exchanged a word. A few years ago this case came to my knowledge. There was an important nomination pending before the Senate, and much outside interest, upon the question of confirmation; and a lobby-man went to one side, and engaged to procure, for $500, the vote of a certain Senator against confirmation; the money not to be paid until the vote was given. This offer was accepted. And the same day he went to the other side, and promised the vote of the same Senator for confirmation, for $500, to be paid after the vote was given. This offer likewise, was accepted. Thus the lobby-man, no matter which way the Senator voted, had secured $500 to himself. But by mere accident the Senator was not in his seat when the vote was taken, and the lobby-man was in danger of losing everything. However, upon representation to each side, that all he could do was to keep the Senator from voting at all, he received $250 from each side.

While Marsh and Evans were discussing the amount Evans should pay to Marsh, it is incredible, if such had been the fact, that Marsh should not have said to Evans, in justification of the sum demanded by him, that he had to divide with the Secretary.

[Here the Senate took a recess for fifteen minutes.]

Mr. DAWES. The counsel would oblige me if he would give me an explanation on one point. If I remember aright, the testimony of Marsh is that at a period subsequent to the date of the letter of August 16, 1870, Mrs. Belknap suggested to him to make application for an office and that he replied in substance that he could not neglect his business. She thereupon suggested a tradership as a kind of office that he could hold and not depart from the business he was engaged in. This was at a time subsequent to the date of this letter applying for this Indian tradership?

Mr. CARPENTER. That is so, and I have already attempted to explain that although it is a mistake, it may not be perjury. That, in point of fact, the intercession of Mrs. Belknap was what secured the appointment; and that Marsh, after the lapse of six years, might have forgotten his prior application. Whether Marsh, in this particular, was in error or was lying, is immaterial to us. The fact, as shown by other evidence, beyond question is, that the intercession of Mrs. Belknap procured the appointment. In further answer to this inquiry I refer to what I have already said upon the subject.

Marsh, subsequently to his examination by managers and counsel, was interrogated by Senators, as to the main point, *intent*. Some of these questions and his answers I shall read. Question by Senator DAWES:

Q. State all the knowledge or information that General Belknap had which it is in your power to state as to the amount of any money sent him or the source from whence it came other than what you have already stated?

A. O, I do not know anything about General Belknap's knowledge; I know nothing of General Belknap's knowledge except the money I sent him.

I ask special attention to this, for I am coming to another matter as to which it is important. He swears here positively that he knows nothing of General Belknap's knowledge except that he sent him money. The only man living, and competent to testify, who, if there was any corrupt understanding, could know it, swears there was not, swears that he knows nothing of General Belknap's having any knowledge on the subject except that he sent him money. Then:

Mr. MORTON. I submit the following interrogatory:

Q. Did General Belknap personally or through any person or by letter ever inquire of you why this money was sent, and did you in any way ever assign a reason to him for it?

A. Never to my best recollection.

Here is one theory of this case. I understand how a skillful lawyer might turn that against the respondent. He would say "Well, I never received statedly sums of money from a person without knowing why he sent them, and General Belknap must have known by whom and why the money was sent." But there are two sides to this case, and there are some considerations which I shall present to you, and which may make the opposite theory equally probable; and then I shall submit to you, as charitable Christians, if the matter can as well be reconciled with innocence as with guilt. Charity should incline your minds to the theory of innocence.

Question. (By Mr. CONKLING.) Was your intention to send money to General Belknap and your act in sending it in consequence of any communication between you and General Belknap? And, if there was any such communication, state it.

Answer. No, sir; there was not.

This is not my language; it is the testimony of the chief witness for the prosecution.

Q. (By Mr. CARPENTER.) As I understand, the first money that you sent was sent to the former Mrs. Belknap, now deceased?

A. Yes, sir.

Q. And that was sent without any arrangement between you and anybody?

A. Yes, sir.

Q. A clean, clear present?

A. Yes, sir.

That is the witness for the prosecution.

Mr. WHYTE. The witness says that he understood the money sent after the death of the child to General Belknap was for General Belknap. I want to ask him from whom he did understand that it was for General Belknap.

I shall have to read the colloquy here in order to show what the testimony was:

The PRESIDENT *pro tempore*. The Secretary will report the question.

The Chief Clerk read the question of Mr. WHYTE, as follows:

Q. From whom did you understand that it was for General Belknap after the death of the child?

Mr. CARPENTER. If the court please, we object to that because it would be hearsay evidence. I understand the answer which the witness has already given is his mere mental conclusion that it was for Belknap.

The WITNESS. That is all.

All of it was his mere mental conclusion that the money was for Belknap, after the death of the child.

Q. (By Mr. CARPENTER.) That is what you say?

A. That is all; not any understanding. Perhaps I am unfortunate in my choice of words. It is my own conclusion; that is all.

Q. Not the result of any understanding with Mr. Belknap or anybody else?

A. No, sir.

Before passing from this point, I wish to call your special attention to it, so that it will be in your minds when we come to another branch of this case. It is the hinge on which this case must turn, so far as the facts are concerned. I do insist that you, Senators, and especially those of you who are lawyers, shall not convict the respondent, except upon proof which carries your mind beyond reasonable doubt and over every charity, to the conclusion that when he received that money he did it with the intention to have his mind influenced and his official conduct perverted thereby. That is the provision of the statute under which you are trying him.

Mr. Marsh swears most positively that he knows nothing which tends to show that General Belknap had any knowledge of this transaction, except his sending this money to him. He had neither conversation nor communication of any kind with him about it. He swears here directly to the point in answer to a question put by the Senator from Maryland [Mr. WHYTE] that when he said he supposed

the money was for Belknap, which was sent after the death of the child, it was his mere conclusion, the conclusion which he formed upon the facts within his knowledge, and no fact was within his knowledge upon which any man can say that General Belknap had the same knowledge. But I think I shall be able to explain hereafter how it was that these two persons were acting under different impressions of fact.

In this connection let it be remembered that Evans swears that he, although most interested, he, who was the so-called victim of the arrangement with Marsh, never dreamt that General Belknap was to have a dollar out of it. That testimony is very important; important because it was for Marsh's interest to have said to him "this seems to be a large sum to be paid but Belknap is to get the lion's share; I have to divide with him." That would certainly have been said, if it had been the fact.

Is it possible that in 1876 a citizen before the highest tribunal in the land is to be convicted of a crime which rests in intent, when no circumstantial testimony worth a fig bears upon it, and when the only witnesses who have any positive knowledge or can give any direct testimony, swear to his perfect innocence? Eighteen hundred and seventy-six, the centennial year in the life of a great nation, its highest tribunal in session, exercising the most awful jurisdiction of the Government; trying a citizen who has filled stations of high trust, and rendered gallant service in the field; and he demanding justice—justice, that a peasant may demand from a king—justice, that any court of law would award to the lowest miscreant,—is justice to be denied to him because the exigencies of a political campaign demand his conviction? No, Mr. President, this Senate will not yield to such a consideration,—will not fix such a blot upon our national escutcheon.

In passing, let me say that it is as clear as noonday that no money whatever was paid nor agreed to be paid to the respondent or any connected with him, before Evans was appointed. Nobody pretends it; and that is a capital fact in this case; for the provision of the statute is that any officer who shall receive money *with the intent* to have his official action influenced thereby shall be punished, &c. And certainly, if official conduct is to be influenced by money, the money must be paid or promised before the performance of the official act. And let me remind you that Marsh testifies that the first money ($1,500) which he sent, was sent to the deceased Mrs. Belknap, without the respondent's knowledge, and not in pursuance of any understanding or agreement, but "a clean, clear present" to her; and this was subsequent to the appointment of Evans.

Another fact is important to be borne in mind. It is charged in some of the articles that the Secretary received money in consideration that he would continue Evans in the place.

There is not a word of proof to show that the removal of Evans was ever contemplated; or, in the words of the statute, a question before the Secretary. And Marsh in his testimony positively denies this allegation of the articles. Nor is there a word of testimony, or any pretense in argument or otherwise, that Evans was an unfit man for the place. Quite the contrary is established by proof and conceded on this trial. His fitness and conduct have been fully indorsed by all the officers at the post. So that there never was any occasion for the Secretary to remove him. Madison said, in the convention which framed the impeachment clauses of the Constitution, that it would be an impeachable offense to remove a good officer. And it remains to be seen in this centennial year if this court will condemn a man for not making such removal.

If the articles here charged that Evans was an unfit man to hold the place, and the question of his removal was under consideration by the Secretary, and that the Secretary received money with intent to have his mind influenced in determining whether to make such removal, they would have stated a case within the statute; but a case, as everybody knows, incapable of proof; a case which all the testimony before you contradicts.

Senators, I now come to the only branch of this case as to the treatment of which I have felt the slightest embarrassment. There is perhaps no situation in life so full of perplexity—no situation in which, after the most thorough examination and anxious reflection, one is so much in doubt as to the course which his duty requires him to pursue, as that of an advocate in the trial of an important criminal cause. And I was never before engaged in a cause so full of such embarrassment. Many times the advocate must take the responsibility of disregarding the requests of his client; but there is great difficulty in determining when he should, and when he should not, adopt a course against the inclination of his client. It is always a delicate thing to do, but sometimes necessary to protect the interests of the client. This case touches the honor and character of General Belknap; and in theory, and on the record, it affects the character of no other person. He is of age, and has a right to speak for himself. He has a right to determine the general course and management of his defense; and, in this particular, though against their own judgment, it is the duty of counsel to obey his direction. In possession of facts and testimony which would exonerate himself by subjecting others to criticism, and perhaps censure; and no matter whether influenced by the dictates of chivalric manhood or the impulses of tender affection, he has a right to say to his counsel, "let that alone; make the defense without that; and, if I must be convicted, the consequences must fall upon me, and not upon you." And if counsel, after repeated endeavors, are unable to move their client from his determination, it would seem to be their duty to observe his wishes. This case has presented that dilemma to counsel; and, so far as concerns defensive proof and aggressive action in this cause, we have obeyed the injunction of our client. We have offered no evidence to change the responsibility for any fact from the respondent to anyone else. He is a man; his shoulders are broad; he is not afraid to assume responsibility, where the instincts of chivalry impel him to shield another—the wife of his bosom, the light of his home—in whom and whose happiness all his hopes are garnered—with whom and in whom he must live or bear no life. At all events, he knows the responsibility he assumes, and chooses to assume it. And as regards evidence in defense, we have obeyed his orders, and have offered nothing which he has forbidden. But the prosecution has seen fit to place upon the record certain facts, as a part of the case against him. And dealing with the case in argument, I deem it clearly my duty, without regard to his wishes, to state the conclusions of truth from such facts, as they appear to my own mind. Counsel owe duties to the court, as well as to their client; and it is not only my duty not to present anything false, but to prevent, if in my power, false conclusions from facts given in evidence.

Senators, everything in this world has its compensations—its evil and its good. Any radical change in the frame-work of society, or in the family relations is attended by consequences not at first foreseen. A few hundred years ago our forefathers were barbarians; and in all the modifications of barbarism the husband is the master and the wife a slave. And as our present civilization grew up from ancient barbarism, the liberties and privileges of men were *first* considered. So that by the common law of England, a hundred years ago, the rights of men were clearly defined and firmly established; the rights of women, and, especially, of married women were almost totally ignored. A family was a little empire of which the husband was the absolute monarch. The wife and children were his subjects. And this was substantially the state of the domestic relations, as fixed by law, until almost our own day. So completely was the wife subject to the husband that the law hardly recognized her existence. Upon her marriage the rents of her real estate were vested in her husband during his life-time; and all her money and personal property of every kind became his absolutely. If she earned money by the labor of her own hands, or received it by inheritance, that money was her husband's. She could neither sue nor be sued, contract nor be contracted with. And the husband, no matter how vile a wretch he might be, had, as against the wife, the absolute control of their children. Both the wife and children were entirely subject to his will, which he might enforce by physical chastisement. And many a wife lingered out a wretched existence, subject to the constant cruelty of her husband, rather than leave his house, abandoning her children to his brutality and tyranny. Of course the influence of a wife's affection, and her gentle ways, often mitigated this condition of wretchedness; but the law did nothing to alleviate it.

But as our civilization ripened, and as the Christian religion was diffused, teaching that women, as well as men, have souls to be saved, women have at last been recognized as being entitled to certain civil rights; which in our country, more than any other perhaps, have been conceded and guarded by legal enactment. In Wisconsin, for instance, for the purpose of holding and managing their own property, wives are, in effect, divorced from their husbands. The separate estate of a woman at the time of marriage, and everything accruing to her by inheritance, or by her own industry, during marriage, is absolutely her own; and she may contract and be contracted with, sue and be sued, in respect of her own property, as though she were unmarried.

I am not here concerned in the discussion of the wisdom of this change, or its effect upon domestic happiness. I am simply dealing with the fact. The change has doubtless produced much good; but good modified, perhaps, by some undesirable accompaniments.

But every human tribunal, to administer *justice*, must consider the circumstances surrounding the person on trial. The husband of to-day has no more legal right to interfere with the contracts, or with management of the separate estate of his wife, than he has to do the same thing with his next-door neighbor. Under the old ways it would have been impossible for a wife to have received or expended a thousand dollars without her husband's understanding the whole matter. But to-day, in legal contemplation, for a husband to investigate the pecuniary transactions of his wife, is mere impertinence. He may by special love-making persuade or cajole his wife into a confession upon the subject, as the wife might formerly have done with the husband; but he has no more legal right to investigate her financial transactions, than the wife formerly had, or now has, to investigate those of her husband. A corresponding change has taken place in the relations between lovers. Formerly, and especially in England under the feudal law, courtship was, in great measure, a matter of business negotiation. The portion to be settled upon the bride, and the financial prospects of the bridegroom, were matters of considerations of far more importance in the negotiation of marriage in high life, than compatibility of temper or mutual affection. But in our day and country a lover who should institute inquiry into the financial condition of his intended, would instantly be rejected by her, and kicked out of doors by her father. A lover nowadays, wooing a damsel, not for what she *is*, but for what she *has*, must carefully conceal his design.

Let us now apply these facts to the case before us. The proof is clear and explicit, that the first $1,500 sent by Marsh was sent to Mrs. Belknap; and it was expressly understood between them that the fact should be concealed from the Secretary. And the testimony of Marsh before the committee, introduced by the prosecution, shows why this was done. Marsh testifies that Mrs. Belknap told him, that any present he might make her must be made without the Secretary's knowledge; because she said that a person had once offered him $10,000 for a post-tradership, and the Secretary had kicked him down stairs. This was the only remittance prior to the death of the former Mrs. Belknap. Marsh testifies that at her funeral in Washington, he went up stairs in General Belknap's house with Mrs. Bower to see the child; that he said to her, "This child will soon have money coming to it." She said, *I know it*, and my sister left the child to me. Marsh says that he thinks he remarked to her that it might be best to speak to the father (General Belknap) about it, and that she replied that, if he sent the money to General Belknap, it belonged to her, and she should get it. Marsh testified on this trial that he had sometimes thought he did speak about it to General Belknap that night, and sometimes he had thought that he did not. I asked him whether he could strike an average between these impressions; he answered, he could not, and that the more he thought about it, the less he knew about it. In the absence of any proof that he did consult the respondent upon the subject at that time, you are bound to presume that he did not. Because no inculpatory circumstance can be considered as established in a criminal case by the testimony of a witness who cannot say whether or not such circumstance existed.

Now, Senators, let me pause again to strike another balance on the ledger of testimony. Up to this point not a word of evidence tends to show that the respondent had the slightest suspicion that Marsh was making presents to anybody; and all the direct evidence in the case is to the effect that he had not. Let us then proceed from the interview between Marsh and Mrs. Bower at the funeral of the former Mrs. Belknap.

There is no testimony fixing precisely the time at which the courtship between General Belknap and Mrs. Bower, his present wife, commenced: and probably it would be impossible for either of them to fix the time precisely. Mrs. Bower was the sister of the former Mrs. Belknap; and Mrs. Belknap, on her death-bed, had confided her infant daughter to the care of Mrs. Bower; and she remained a member of the family of General Belknap for the purpose of performing this duty. The line which separates the highest degree of respect from the beginnings of love, is very vague and uncertain. As the sister of his wife he had respected her, and loved her within the bounds of brotherly affection. After the death of his wife she remained a member of his family, devoting herself to the care and nurture of his infant daughter. And gradually, no doubt, and imperceptibly to both, the feelings appropriate to their former relations, grew and ripened into love. While this was in progress, other remittances were made by Marsh. And the testimony of Marsh, in relation to the interview between himself and Mrs. Bower at the time of the funeral, shows that she regarded herself as entitled to such subsequent remittances as Marsh might make. The former Mrs. Belknap, who would not permit her husband to know anything of the remittances made by Marsh, had manifestly communicated to her sister the secret of the arrangement. And Mrs. Bower thereafter pursued the policy adopted by her sister, and concealed from General Belknap the real nature of the transaction.

This was very easy for her to do. She had a separate estate amounting to about $40,000; and during the period of their courtship it was an easy thing for her to say to him, that these moneys resulted from investments which Marsh had made for her. And this she might consider as one of the harmless delusions which have been practiced by sweethearts upon their lovers, and wives upon their husbands, from time immemorial.

It was very natural for General Belknap purposely to abstain from any investigation of this matter; and a word from her to the effect that she expected remittances from Marsh, which she had directed to be sent to him, would of course prevent any inquiry on his part in relation thereto. Mrs. Bower was subsequently in Europe for nearly a year before her marriage to Belknap; and it was a matter of forgetfulness on our part that we did not prove that $3,000 of this money was remitted to her there.

Mr. Manager McMAHON. I do not like from the counsel the statement of facts which were not proven and which if proven would have been fully explained.

Mr. CARPENTER. My statement is in and I do not know how I can get it out.

Mr. Manager McMAHON. I simply wish to state that we could have explained that, and shown that the money was not sent to her as part of this remittance. We would have explained why it was sent to her. We knew it exactly and I think the gentlemen failed to put it in because they knew we could explain it.

Mr. CARPENTER. O, no! we forgot it. It is one of those accidents which will occur in a long trial. What these managers could have done is something enormous. What they have done toward introducing testimony to convict the respondent, is very trifling. One thing they have shown, however, is that $1,500 of this money is loaned in Iowa, and stands in her name to-day. But of course I claim nothing from the evidence we did not introduce.

Marsh, testifying in his crazy way, says in general that when he would receive remittances from Fort Sill, he would write to the respondent asking how he should remit it, and the respondent would give him directions, which he would obey. I do not feel authorized to charge Marsh with intentional perjury in this case. But it is certain there is a screw loose in him somewhere. It is evident from his conduct after giving testimony before Mr. CLYMER'S committee, and from portions of his testimony given on this trial, that his mind is somewhat unsettled. This is to be borne in mind, however, that as to the first remittance, where he was held to the point, he swears that he sent it to Mrs. Belknap, not to the Secretary; and likewise as to the last payment, in regard to which he was particularly interrogated, he swears that the respondent directed him by letter to send the remittance to Mrs. Belknap, at 2022 G street. That this letter miscarried, and he wrote the Secretary again, and received a reply directing him to pay the money to Mrs. Belknap, at St. James Hotel, New York. These are the only instances as to which Marsh pretended to have particular recollection. As to all the others, he says he testifies only from general recollection, not remembering any particular letter.

Now let me call your attention to what Marsh says took place at General Belknap's house, when he came here to testify before Clymer's committee. He says he went to the house of General Belknap, and remained overnight; and had a long interview with Mrs. Belknap. He says, in his general style of swearing, that General Belknap was in and out of the room at several times, and understood the general nature of their conversation. This is evidently the mere inference of Marsh; and he does not pretend to state a word that was said by General Belknap, or a word that was said to him. But he does say that Mrs. Belknap over and over again requested and urged him to tell the committee that the moneys he had sent to her through the Secretary were the result of investments he had made of her individual property. He says he went to bed late at night, greatly disturbed by the matter and did not sleep. That he came down early in the morning, saw the Secretary before breakfast, and told him that he had made up his mind to leave the country. The Secretary urged him not to do so; telling him that, after having been subpœnaed here in regard to charges against him, his leaving the country without testifying would ruin him, the Secretary. Marsh replied that if he went before the committee, he would ruin him. General Belknap thought not, and to the last implored him to stay and testify to the truth. Mr. CLYMER, after reading the testimony of Marsh given before the committee, says that Mr. Blair, as attorney for General Belknap, put one question to Marsh, but does not state what it was. And although the RECORD does not show this, I am sure the managers will not controvert the statement I am about to make. I am informed that Mr. Blair asked Marsh whether the Secretary at this time requested him to go before the committee and state anything that was untrue; to which Marsh replied, "No, certainly not." At all events, in the absence of any testimony that he did make such request, the presumption is that he did not.

Now, Senators, consider this scene, and what is the natural inference from it. If General Belknap had been told by his wife that these moneys belonged to her, and were sent by Marsh to her, through him, as the result of investments of her private funds, this would explain why the respondent feared nothing from Marsh's stating the whole truth before the committee. If the respondent did know the facts, then his persistent effort to overcome the purpose of Marsh to leave the country,—his persistent efforts to induce Marsh to go before the committee and testify to the whole truth, prove the respondent to be an idiot, who ought not to be subjected to impeachment: for although the facts might not convict him of any offense, yet he must have known from the present attitude of the press toward the Administration, and the present condition of public sentiment, the exposure, exaggerated by malice, would do him serious harm as a public man.

Again, upon the theory I am suggesting, the suggestions of Mrs. Belknap to Marsh were perfectly natural. If she had left her husband under the belief that these moneys were her own, and the result of investments of her individual property, she would have been anxious, above all things, to have this supported by Marsh's statements. Her anxiety would have been to preserve the confidence of her husband; knowing full well that whatever clouds may gather above husband and wife, they are safe, while no clouds gather between them.

This theory, and this alone, explains Marsh's anxiety to get out of the country, and the Secretary's anxiety that he should remain and swear to the facts. Marsh, not knowing what had passed between the respondent and his wife, and supposing that the respondent was acquainted with the whole transaction, naturally concluded that his testimony would injure the respondent. While the respondent, totally ignorant of the real nature of the transaction, apprehended no harm from a disclosure of the real facts.

The light shed by circumstances may be faint and pale; but in a case where judgment must rest upon circumstances, the judge must be guided by such light, dim though it may be. And if the proof leaves a reasonable doubt, charity must turn the scale in favor of innocence. Silence is sometimes more eloquent than speech. And in determining a cause the absence of one fact may be as convincing as the presence of another.

The theory I suggest is supported by much of the evidence in this case. It is not contradicted by any. Marsh says he supposed that the money sent after the death of the child was for the respondent. He says, however, that this was merely his mental conclusion, and that he never exchanged a word with respondent or any one else upon the subject. The fact that the respondent never exchanged a word with Marsh upon the subject, is as fully explained upon the theory that he understood the money to belong to Mrs. Belknap, as upon the theory that he knew all the facts. And here, again, the rule of law applies, that if a fact—in this case the silence of the respondent—is as reconcilable with one theory as the other, then it must be referred to the theory of innocence.

Senators, I suggest this scene at the house of General Belknap for your earnest consideration. I have stated as clearly as I can the proper conclusion to be deduced from it. Considering this branch of the case, I think it sheds light upon other parts of the testimony, and contributes greatly to support the theory of the respondent's innocence. It certainly affords no evidence of guilt, but suggests one great moral lesson, which I state for the benefit of the ladies in the gallery,—Sweethearts and wives, *never* keep a secret from your lovers and husbands.

Now let me refer to some circumstances strongly indicating the innocence of the respondent. And first, let me refer to the letter of Robinson, who had been court-martialed and dismissed the service. While his case was pending in the Department, for approval or disapproval of the finding of the court-martial, he writes the respondent a letter, dated April 2, 1875, saying he is thoroughly posted in regard to the tradership at Fort Sill, and that if the finding of the court is set aside, and he is not dismissed from the service, he will inclose to the Secretary all the evidence and papers in his possession; but, otherwise, he shall publish and pursue the matter to extremity. The Secretary took up the case, recommended the dismissal of Robinson, and sent the papers to the President for that purpose; and the President dismissed him. And then the Secretary filed his letter with the record in the Department. It is proverbial that one misstep leads to another. And it is inconceivable that, if the Secretary believed that there was anything in connection with that post-tradership injurious to him, he would have placed upon the records of the Department a letter making such statements; especially as the letter was marked "personal," and need not have been placed on file at all.

The manager, Mr. JENKS, the other day read a passage from this letter to show that Robinson was court-martialed for not paying his bills to Evans. This is entirely untrue. I have here an office copy of the charges and specifications, and the findings of the court, in that case. I will state from it, as part of my argument, what the charges were, and then hand it to the managers. He was charged that upon several occasions he had drawn his pay twice and certified to false vouchers; that he had borrowed several hundred dollars from a sergeant of his company, and had refused to pay him; but he was not charged with owing and not paying Evans, nor was Evans mentioned in the case at all. So that pretense falls to the ground.

I will now hand this document to the managers, [handing it to Mr. LORD.]

Again, the manner in which these remittances were sent, shows the innocence of the Secretary. If there had been anything about them which was improper is it possible that the Secretary would have furnished by receipts and by indorsement of checks passed to his own credit all the necessary evidence of his own guilt?

But the managers say there was a great abuse at Fort Sill, and that Evans was compelled to charge over upon the officers and soldiers the amount he had to pay to Marsh.

In the first place, Evans flatly contradicts this. He testifies that after he made this contract with Marsh, and returned to Fort Sill, he did not mark up the price of a single article sold to officers or soldiers.

Again, Evans testifies that immediately after his return to Fort Sill, about the 1st of November, 1870, he showed to General Grierson, commander of the post, a copy of the contract between him and Marsh, and explained the whole transaction to him. By a circular order issued by the Secretary June 7, 1871, it was directed as follows:

> Commanding officers will report to the War Department any breach of military regulations, or any misconduct on the part of post-traders.

Thus it appears that General Grierson had been fully aware of the relations between Marsh and Evans from November 1, 1870, and was expressly commanded by the circular of June 7, 1871, to communicate to the Department any misconduct on the part of the post-trader at his post. The pretense that Grierson was afraid of offending the Secretary, by obeying the circular order of June 7, 1871, is absurd as well as false. His information was derived from Evans, and Evans himself testifies here that he never heard until very recently that the Secretary was in any way benefited by the Marsh contract. Therefore Grierson, when he received the Secretary's circular order of June 7, 1871, could not have been deterred from executing it by fear of displeasing the Secretary who had issued it; and not a word was received at the Department from Grierson upon this subject until after the publication of the Tribune article, when the Secretary called upon him to report the facts. Is it to be supposed that an honorable officer, cognizant of a great abuse under his own command, and expressly commanded by the circular order of the Department, June 7, 1871, to report the same, would remain silent upon the subject for years? One thing is certain; there was no such abuse at Fort Sill, or Grierson ought to be court-martialed and dismissed the service.

The testimony of Evans explains why the Marsh contract did not increase the prices. He was engaged in other business, and was a Government contractor; and the great benefit resulting to him from the appointment was not from the business of post-trader, but that the appointment secured him a home on the reservation; so that the post-tradership was with him altogether a secondary consideration.

In February, 1872, an article appeared in the New York Tribune disclosing the relationship between Marsh and Evans. Now the managers say that, if the respondent had been an honest officer, he would instantly have interfered, removed Evans, and have done I know not what. But I submit to you that such a proceeding by the Secretary, based upon nothing but a newspaper article, would have been strong evidence against the Secretary;—evidence upon which it might be fairly asserted that he had prior personal knowledge of everything stated in that article. This is precisely what he would have done if he had been guilty. On the contrary, I submit, that the course pursued by the Secretary was precisely that which would have been pursued by an officer that meant to do his duty. He did not break into a panic, over a newspaper article, as he probably would have done if he had known it to be true and felt any anxiety upon the subject. He wrote to the commandant of the post to report the facts of the case.

General Grierson answered this letter under date of February 28, 1872, and his answer was received in the Adjutant-General's Office March 9, and referred to the Secretary March 11, 1872. In the light of the testimony given in this case the letter of General Grierson is remarkable and seems disingenuous. He complains that Evans has demanded exorbitant prices for his goods, and attributes this to a contract between Marsh and Evans, which from a reading of the letter one would suppose had just come to his knowledge. But Evans testifies that he showed a copy of the contract to General Grierson about November 1, 1870, and he could imagine that making a report of the fact to the Secretary of War, as he was expressly commanded to do, by the circular of June 7, 1871, would offend the Secretary, he does not inform us, and it is not easy to apprehend.

But passing this, the letter of Grierson was received by the Secretary on the 11th of March. While the matter was under consideration General McDowell called to see the Secretary, and in a friendly interview mentioned the subject; and the Secretary requested the general to write an order which would correct the abuse. Thereupon General McDowell did draft an order, which, after submitting to Mr. GARFIELD, of the House of Representatives, he handed to the Secretary; and this was issued as a circular order on the 25th of March, 1872.

The managers have, with great injustice, sought to misrepresent the action of the Secretary in this matter; and one of the managers the other day charged that the Secretary was guilty of falsehood in this, that he represented to General McDowell that "he had appointed Marsh and he supposed he had received the office." And the manager further charged that the Secretary did not show Grierson's letter to General McDowell. This is a gratuitous misstatement on the part of the manager. There is no evidence that General McDowell did not see Grierson's letter, or that the Secretary sought to withhold it from him. Nor is it true that General McDowell was ignorant of the real circumstances of the case at Fort Sill. In the first place, the Tribune article which set McDowell in motion stated that Evans was the post-trader, and was paying a stipend to Marsh. And let me show you by his own testimony that he did understand the facts of the case.

Here is the testimony of General McDowell:

> Mr. Manager MCMAHON. I should like an answer to this question. (To the witness.) If you had known that the actual state of circumstances at Fort Sill was that Evans was really the post-trader, that Marsh had no capital in it, and that Evans was paying $12,000 a year simply for the privilege of holding it——
>
> A. That was about what I understood to be the case.

General Belknap is charged with a falsehood in that he informed McDowell that Marsh was the post-trader; and, when the manager puts to him the question "If you had known that Marsh was not the post-trader but that Evans was," the witness interrupts him by saying "That was about what I understood to be the case." When Mr. MCMAHON tried to assume that he did not know the fact and that if he had he would have drawn a different order, he stops him and says, "That is what I understood the fact to be:"

> Q. (By Mr. Manager MCMAHON.) Did you draw that order for the purpose of correcting that?
>
> A. Yes.

Of course it made no difference to the officer or soldier whether his money went to Evans or Marsh. The only grievance to the soldier was that he might be charged too much for what he purchased. McDowell testifies that the order he drew provided for a council of administration to fix the prices of articles to be sold to officers and men; which corrected the abuse and the only abuse complained of. And to the question put by me,

> Q. Would not that order have corrected it, if it had been executed?,

He answered,

> I have two or three times said I thought it would.

We gave in evidence a letter received by the Secretary of War from Lieutenant-General Sheridan in regard to this order. He says:

CHICAGO, *March* 29, 1872.

MY DEAR GENERAL BELKNAP: I have examined the circular on the subject of post-traders and think very well of it. So far as the troops are concerned it is especially fair and just.

It is possible that post-traders may give you some annoyance by appeals arising from the action of councils of administration, but probably more from the action of commanding officers. There are so many men in this world whose hair is always lying in the wrong direction, and who when invested with the slightest authority must make it felt, that I fear the post-traders will be sending you many appeals.

That is the opinion of General Sheridan of the circular issued by the Secretary, after the interview with McDowell, the circular drawn by McDowell to correct the only abuse ever mentioned, and Sheridan says, it is especially fair and just as to the troops, but it may be too severe on the traders; they will annoy you about it; but so far as the soldiers are concerned, this order is especially fair and just. General McDowell testified that the order of March 25, if executed, would have corrected the abuse. Executed by whom? Why, by the officers at the post. They were *charged* with its execution. And here let it be borne in mind that since the issuance of that order, (March 25, 1872,) no complaint has been heard from any quarter. This prosecution has not resulted from the present existence of any abuse at Fort Sill. All that was corrected by the order of March 25, 1872, and no complaint has since been heard.

I have repeatedly called your attention to the fact that there is no testimony establishing guilty intention or corrupt purpose on the part of the Secretary—no testimony that he knew that the moneys which were passing through his hands from Marsh came from Evans; and I maintain that the whole conduct of the Secretary, between the publication of the Tribune article and the issuance of the circular order of March 25, 1872, confirms this theory. His conduct was that of an honest, and not of a dishonest, man. He was anxious to correct the abuse, if it existed; but before interfering, he inquired, through the regular military channels, whether any abuse calling for interference actually existed. Had he known the real facts of the case, the Tribune article would have frightened him into instant action. And the fact that, after the publication of that article, he proceeded in the usual official way to ascertain whether its statements were true, and that, when he ascertained they were, he proceeded promptly and efficiently, proves his integrity in the premises.

This impeachment is the result of a disagreement which happened between two American ladies sojourning in Paris, several years ago; and Marsh, the feeble tool of a woman unable to forgive one who commanded more attention than herself, has been pushed forward by his spiteful wife to wreak revenge upon Mrs. Belknap; and the Senate sits here to-day unconsciously executing her purpose.

There is no pretense but that the order of the Secretary of War, of March 25, 1872, obliterated the last vestige of any alleged abuse resulting from the contract between Marsh and Evans. There is no pretense that from that time to this the Secretary of War has not borne himself commendably in his high office as he had ever before done.

And now, Senators, looking at the evidence, a just view of which I have endeavored to present to you, let me ask, Upon what can you rest conviction?

(1.) The respondent stands before you under examination for almost seven years' administration of a great Executive Department of this Government, to which he was appointed for his ability, and his gallant service for the Union in the field.

(2.) We have shown that he possessed a spotless character from boyhood to 1869, when he was appointed Secretary of War; and that his administration of the War Department has been characterized by energy, ability and integrity, never questioned save in the single transaction now under examination.

(3.) And in regard to this transaction we have explained every circumstance relied upon as evidence of guilt, dispelled every suspicion surrounding it, and we point you, in perfect confidence, to all the direct testimony in the case, which conclusively and emphatically acquits the respondent.

And it is now, Senators, for you to say whether you can find guilt in this transaction, in the face of all the direct evidence bearing upon it; and

Whether, should you be inclined to condemn this one transaction, you can say the public safety requires that you should brand the respondent as a criminal, and dismiss him from your presence in disgrace.

Which of you would be willing to have your final condition determined by a particular transaction? Is it not upon the average and general balance of our lives that we all hope for salvation? The sun has spots upon its surface. And suppose you find one spot upon the character of General Belknap, will you upon that one spot render a judgment of condemnation consigning him to everlasting disgrace and infamy?

I turn now from the testimony to present to you some considerations of law, which, whatever may be your judgment upon the facts, I deem to be conclusive of this case.

I.

After the articles were exhibited the respondent interposed a plea to the jurisdiction of the court, upon the ground that he was not an officer of the United States at the time of impeachment. To this plea there was a replication, and the respondent demurred. This demurrer was argued by the managers and by the counsel for respondent, and submitted to the court. Whereupon, after consideration, the court made the following order:

It is ordered by the Senate sitting for the trial of the articles of impeachment preferred by the House of Representatives against William W. Belknap, late Secretary of War, that the demurrer of said William W. Belknap to the replication of the House of Representatives to the plea to the jurisdiction filed by said Belknap be, and the same hereby is, overruled; and, it being the opinion of the Senate that said plea is insufficient in law and that said articles of impeachment are sufficient in law, it is therefore further ordered and adjudged that said plea be, and the same hereby is, overruled and held for naught.

This order precluded us from demurring to the articles of impeachment. We thereupon filed a motion to vacate it, but the motion has not been argued.

The order proceeded upon the principle that where the party demurring must succeed upon the particular point raised by his demurrer, the court will look back through the record to see if his former pleadings have been defective, and give judgment against the party first in fault. But the application of the principle to this case was erroneous in two particulars; First, the rule is subject to the exception, that where a demurrer is filed to a plea in abatement, or to a replication to such plea, the court will not look to the declaration to see whether that be good or bad; and this case was within the exception to the rule; second, it is only where the party demurring must *succeed* upon the particular point raised by his demurrer, that the court looks back through the record for any purpose. But in this case the court overruled the demurrer, and therefore the prior record was not before the court.

The character of a plea is determined by its prayer and conclusion. Though it contain matter in bar, yet, if it conclude in abatement, it is a plea in abatement. And if it contain matter in abatement, but conclude in bar, it is a plea in bar. "The conclusion makes the plea." (Shaw *vs.* Dutcher, 19 Wendell, page 222. See also Thomas *vs.* Lord, 1 Lord Raymond, pages 356, 357; Godson *vs.* Good, 6 Taunton, page 587; Executor, &c., *vs.* Elmendorf, 10 Johnson, page 49; Kent, justice, in Jenkins *vs.* Peporn, 2 Johnson's Cases, page 313; Rex *vs.* Shakespeare, 10 East, pages 83–87.)

The plea in this case was a plea to the jurisdiction. It did not conclude with prayer, as in bar, for judgment as to the sufficiency of the articles, but prayed judgment "whether *this court can or will take further cognizance of the said articles of impeachment.*"

It was a plea to the jurisdiction, which is a plea in abatement; that is, a plea intended to stop the proceeding, without reference to the merits; a plea which prayed, not the judgment of the court as to the sufficiency in law of the articles, but as to the jurisdiction of the court to pass upon the question of their sufficiency in law, or any other question in the case.

Stephen's Pleading, page 144, speaking of the rule that the court on demurrer will look back through the record, says:

It is, however, subject to the following exceptions: First. If the plaintiff demur to a *plea in abatement*, and the court decide against the plea, they will give judgment of *respondeat ouster*, without regard to any defect in the declaration.

1 Shower's Reports, 91:

Memorandum. In the case of Chambers *vs.* Garrett, this term, Holt, chief justice, refused to permit me to urge or argue any exception to a declaration upon a demurrer to a plea in abatement.

In Hastrop *vs.* Hastings, 1 Salkeld, 213, it was held:

The defendant shall not take advantage of mistakes in the declaration upon a plea in abatement; but if he would do that he must demur to the declaration.

In Bullythorp *vs.* Turner, Willes's Reports, 478, the court say:

It has been holden that in a plea in abatement you cannot object to any defect in the declaration; and so is the case of Hastrop *vs.* Hastings, Salkeld, 212.

In Davies *vs.* Penton, 6 Barnewall and Creswell, 222, Abbott, chief justice, says:

Then as to the other point, it is said that the *plaintiff*, upon certain points of the record, *has set forth his bankruptcy*, and that as it appears upon the whole record that his assignees are entitled to the benefit of the contract stated in the declaration, the plaintiff cannot have judgment upon his demurrer. But in considering what judgment we are to pronounce upon this demurrer, we are bound to look *only to that part* of the record *upon which the demurrer arises*, and not at the *other collateral parts of the record not connected with it.*

Bayley, J., said:

As to the other point, in arguing the question whether the defendant or the plaintiff is entitled to judgment upon this demurrer, neither of them has a right to have recourse to any parts of the record not connected with that upon which the demurrer arises.

Holroyd, J., said:

I entirely agree with my brother Bayley that the defendant cannot claim in aid *the other parts* of the record to show that the plaintiff is not entitled to judgment upon the demurrer.

In Shaw *vs.* Dutcher, 19 Wendell, 223, Cowen, J., delivering the *unanimous* opinion of the court, said:

But it is said the declaration is bad; the plaintiff was first in fault, and cannot therefore make an available objection to the plea. Such is the general rule, *but a demurrer to a plea in abatement is an exception.* * * * The same general doctrine is again repeated by Sutroyche in a note to Routh *vs.* Weddell, volume 2, 1567. Hastrop *vs.* Hastings, 1 Salkeld, 212, recognized in Bullythrop *vs.* Turner, Willes, 478, is a direct adjudication on the same point. Clifford *vs.* Corry, 1 Massachusetts, 500, same point. *The rule is recognized in many books of reference, and I do not find that it is quest oned by any.* (Comyn's Digest, Abatement I, 14; Stephen's Pleading, 163, first American edition; 1 Chitty's Pleading, 495; Bacon's Abridgment, title

Abatement, P.) Bacon's Abridgment, as we have cited it at volume 1, page 29, American edition of 1813, adds as a reason, what is material to the main distinction we have been considering in these words, "as nothing but the writ is then in question, *for nothing else* is pleaded to."

In Ellis *vs.* Ellis, 4 Rhode Island, 122, which was demurrer to plea in abatement, the court say:

We have not looked into the declaration to see whether it be faulty in this particular or not; *nor are we entitled*, upon this demurrer, to look at the declaration for the purpose of considering its defects. It is well settled that a demurrer to a plea in *abatement* does not look back to a fault in the declaration, since nothing but the writ is then in question." (1 Saunders, page 285, n. c; 1 Chitty's Pleading, pages 457, 647, and cases cited, third American edition.)

In Clifford *vs.* Cony, 1 Massachusetts, 500, Wilde, J., said:

We do not take notice of defects in the declaration upon a demurrer to a plea in abatement.

In Price *vs.* Railroad Company, 18 Indiana, 139, the court say:

There was, it may be observed, no demurrer to the complaint; and demurrers to answers in abatement do not reach back to the complaint. (Shaw *vs.* Dutcher, 19 Wendell, 216. Answers in abatement are not addressed to the complaint.)

In Ryan *vs.* May, 14 Illinois, 49:

The general rule, that a demurrer must be carried back and sustained to the first defective pleading, does not apply so as to carry it behind a plea in abatement. If the plea is bad the judgment must be *respondeat ouster*. A demurrer to one pleading cannot be carried back to another to which it did not profess to be an answer, and with which it had no connection.

To the same effect see Hunter *vs.* Belgen, 39 Illinois, 367; Knott *vs.* Clements, 13 Arkansas, 335; Crawford *vs.* Slade, 9 Alabama, 887; Dean *vs.* Boyd, 9 Dana, Kentucky, 169.

In Dearborn *vs.* Kent, 14 Wendell, 187, there was a plea in bar, a replication, and demurrer. The court, by Savage, Chief Justice, after holding the replication *good*, say:

The defendant seeks to attack the declaration, but that he cannot do. The pleading *demurred to*, being declared *good*, the *demurrer* was *not well taken*, and can be of *no service to the defendant*. If he thought the declaration bad, he might have demurred to it before he plead; not having done so, he cannot reach it by demurring to the replication. It was formerly the practice, *and is now*, to attack previous pleadings *in certain cases;* for example, had these replications been adjudged *bad*, it would have been competent for the plaintiff to have shown that the pleas were bad, and then the defendant might have shown the declaration was bad; but the replication being adjudged *good*, the investigation *stops there*.

Other authorities might be cited, but those referred to are sufficient to settle the question, if authorities can settle it; if not, more would be useless.

In this case, the demurrer to the replication having been overruled, the sufficiency of the plea in abatement was not before the court. And even had the demurrer to the replication been held good, the court could have gone no further back than to the plea. Consequently it was not open to us, on the argument of this demurrer, to attack the sufficiency in law of the articles of impeachment; and their sufficiency, not being questioned by our demurrer, was not before the court.

It is, therefore, respectfully submitted that, in strictness, the defendant is entitled to a vacation of the order, and an order declaring the present proceedings to be a mistrial. I have no doubt that in case on indictment in the courts of law, under circumstances like these, a trial would be set aside, and the party be restored to his right to plead, as though such proceedings had not been.

It is well settled that the courts of the United States can exercise no common-law criminal jurisdiction. The United States has never adopted the common law. Most of the *States* have, with certain modifications, adopted the common law. By the judiciary act of 1789, it is provided that the laws of the several States shall be the rule of decision of the Federal courts sitting in such States. Thus the Federal court sitting in Maryland will follow not only the statutory but such of the common law as the State of Maryland has adopted and made her own. So in the State of Wisconsin; and so in other States. So that the Federal courts decide questions resting in the common law of each State as such States have adopted the same. But the United States has never for itself adopted the common law. Consequently offenses at the common law merely cannot be tried and punished by any Federal court. Every offense which a Federal court has jurisdiction to try and punish must be a statutory offense; that is, it must be defined and the punishment fixed by an act of Congress.

It is well-settled law that every statutory offense must be described in an indictment according to the words of the statute describing the offense. (1 Wharton's Criminal Law, page 365, and cases cited; People *vs.* Allen, 5 Davis, page 79; Commonwealth *vs.* Hampton, 3 Grattan, page 590.)

Not one of the articles of impeachment charges that the respondent received money *with the intent* to have his mind influenced thereby in the determination of any question pending before him or which could be brought before him as Secretary of War.

A demurrer to these articles might safely have been interposed, but for the reason that the court, in response to the argument upon the demurrer to the replication to the plea in abatement, declared that the articles were sufficient in law. This question had not been argued on either side of this case, and was not before the court on the demurrer submitted.

And in strictness the respondent is entitled to an order vacating the order of the court holding the articles sufficient in law; and declaring this to be a mistrial. And I have no doubt that in case on indictment in a court of law under similar circumstances the trial would be declared a mistrial, and the defendant be remitted to the right to plead anew to the indictment.

I neither ask nor expect such order in this case. Because we are entitled to object here to the articles of impeachment; and have here the full advantage of their insufficiency.

I come now to the question of the jurisdiction of the court over this case.

Jurisdiction is the vital element of every judicial proceeding. And where jurisdiction is wanting, no matter how high the magistrate or dignified the tribunal, the judgment rendered is an absolute nullity. Jurisdiction must exist, too, at the commencement of the proceeding, continue through its progress, and remain at its termination. Therefore it is never too late, during the pendency of a cause, to raise the objection that the court has no jurisdiction.

United States *vs.* Arredondo, 6 Peters, 709:

The power to hear and *determine* a cause is jurisdiction; it is *coram judice* whenever a case is presented to bring this power into action. If the petitioner states such a case in his petition that on a demurrer the court would render a judgment in his favor, it is an undoubted case of jurisdiction, whether on an answer denying and putting in issue the allegations of the petition, the petitioner makes out his case [or not] is the exercise of jurisdiction conferred by the filing of a petition containing all the requisites, and in the manner prescribed by law.

Voorhies *vs.* Bank, 10 Peters, 474:

Speaking of decisions of the Supreme Court, the court say:

If not warranted by the Constitution or laws of the land *our* most solemn proceeding can confer no right which is denied to any judicial act under color of law, which can properly have been deemed to have been done *coram non judice;* that is, by persons assuming the judicial function in a given case without lawful authority.

The line which separates error in judgment from the usurpation of power is very definite, and is precisely that which denotes the cases where a judgment or decree is reversible only by an appellate court, or may be declared a nullity collaterally when it is offered in evidence in an action concerning the matter adjudicated, or purporting to have been so. In the one case it is a record importing absolute verity; in the other mere waste paper; there can be no middle character assigned to judicial proceedings which are revocable for error. Such is their effect between the parties to the suit, and such are the immunities which the law affords to a plaintiff who has obtained an erroneous judgment or execution.

In Rhode Island *vs.* Massachusetts, 12 Peters, 718, the court say:

However late this objection [to the jurisdiction] has been made, or may be made in any cause, in an inferior or appellate court of the United States, it must be considered and decided before any court can move one further step in the cause, as any movement is necessarily the exercise of jurisdiction. Jurisdiction is the power to hear and determine the subject-matter in controversy between parties to a suit, to adjudicate or exercise any judicial power over them. The question is whether, on the case before a court, their action is judicial or extrajudicial, with or without the authority of law, to render a judgment or decree upon the rights of the litigant parties. If the law confers the power to render a judgment or decree, then the court has jurisdiction. What shall be adjudged or decreed between the parties, and with which is the right of the case, is judicial action, by hearing and determining it. (6 Peters, page 709; 4 Russell, page 415; 3 Peters, pages 20-37.)

A motion to dismiss a cause pending in the courts of the United States is not analogous to a plea to the jurisdiction of the court of common law or equity in England. There the superior courts have a general jurisdiction over all persons within the realm, and all causes of action between them. It depends on the subject-matter whether the jurisdiction shall be exercised by a court of law or equity; but that court to which it appropriately belongs can act judicially upon the party and the subject of the suit, unless it shall be made apparent to the court that the judicial determination of the case has been withdrawn from the court of general jurisdiction to an inferior and limited one. It is a necessary presumption that the court of general jurisdiction can act upon the given case, when nothing appears to the contrary. Hence has arisen the rule that the party claiming an exemption from its process must set out the reasons by a special plea in abatement, and show that some inferior court of law or equity has the exclusive cognizance of the case; otherwise, the superior court must proceed in virtue of its general jurisdiction. This rule prevails both at law and in equity. (1 Vesey, sr., page 204; 2 Vesey, sr., page 307; Mitford, page 183.)

A motion to dismiss, therefore, cannot be entertained, as it does not and cannot disclose a case of exception; and if a plea in abatement is put in, it must not only make out the exception, but point to the particular court to which the case belongs. A plaintiff in law or in equity is not to be driven from court to court by such pleas. If a defendant seeks to quash a writ, or dismiss a bill for such cause, he must give the plaintiff a better one, and shall never put in a second plea to the jurisdiction of that court to which he has driven the plaintiff by his plea. (1 Vesey, sr., page 203.)

There are other classes of cases where the objection to the jurisdiction is of a different nature, as on a bill in chancery; that the subject-matter is cognizable only by the king in council, and not by any judicial power, (1 Vesey, sr., 445;) or that the parties defendant cannot be brought before any municipal court on account of their sovereign character and the nature of the controversy, as 1 Vesey, jr., 371, 387; 2 Vesey, jr., 56, 60; or in the very common cases which present the question whether the cause properly belongs to a court of law or equity. To such cases a plea in abatement would not be applicable, because the plaintiff could not sue in an inferior court. The objection goes to a denial of any jurisdiction of a municipal court in one class of cases, and to the jurisdiction of any court of equity or of law in the other; on which last the court decides according to their legal discretion. An objection to jurisdiction on the ground of exemption from the process of the court in which the suit is brought, or the manner in which a defendant is brought into it, is waived by appearance and pleading to issue. (10 Peters, 473; Toland *vs.* Sprague, 12 Peters, 300.) *But when the objection goes to the power of the court over the parties, or the subject-matter, the defendant need not, for he cannot, give the plaintiff a better writ or bill. Where no inferior court can have jurisdiction of a case in law or equity, the ground of objection is not taken by plea in abatement,* as an exception of the given case, from the otherwise general jurisdiction of the court; *appearance does not cure the defect of judicial power, and it may be relied upon by plea, answer, demurrer, or at the trial or hearing, unless it goes to the manner of bringing the defendant into court,* which is waived by submission to the process.

As a denial of jurisdiction over the subject-matter of a suit between parties within the realm, over which and whom the court has power to act, cannot be successful in an English court of general jurisdiction, a motion like the present could not be sustained consistently with the principles of its constitution. But as this court is one of limited and special original jurisdiction, its action must be confined to the particular cases, controversies, and parties over which the Constitution and laws have authorized it to act; any proceeding without the limits prescribed is *coram non judice*, and its action a nullity. (10 Peters, 474; S. P. 4 Russell, 415.) *And whether the want or excess of power is objected by a party, or is apparent to the court, it must surcease its action or proceed extrajudicially.*

Consent never confers jurisdiction to hear and determine a cause, where the law does not confer the power. (Hurd *vs.* Tombs, 7 Howard, Mississippi, page 229; Bell *vs.* Railroad, 4 Smedes & Marshall, page 549; Leigh *vs.* Mason, 1 Scammon, page 249; Ex parte Williams, 4 Yerger, page 579; Green *vs.* Collins, 6 Iredell, page 139; Bluett *vs.* Nicholson, 1 Branch, page 384; Ginn *vs.* Rogers, 4 Gilman, page 131; Long *vs.* Long, 1 Morris, page 381; Moran *vs.* Masterson, 11 B. Monroe, page 17; Chapman *vs.* Morgan, 2 Green, Iowa, page 374; State *vs.* Bonney, 34 Maine, page 223; Winn *vs.* Freel, 19 Alabama, page 171; State *vs.* Cardline, 20 Alabama, page 19; Jeffries *vs.* Harbin, 20 Alabama, page 387; Field *vs.* Walker, 23 Alabama, page 155; Dicks *vs.* Hatch, 20 Iowa, page 380; Wanzer *vs.* Howland, 10 Wisconsin, page 8; Bureau County *vs.* Thompson, 39 Illinois, page 566; Dodson *vs.* Scraggs, 47 Missouri, page 285; Garrett *vs.* Trotter, 65 Missouri, page 430; Damp *vs.* Dane, 29 Mississippi, page 419; ——— ———, 26 New Hampshire, page 232; Jackson *vs.* Ashton, 8 Peters, page 148; Dred Scott case, 19 Howard, page 393.)

An objection to the jurisdiction never comes too late, and cannot be waived by consent nor forfeited by bad pleading. (Stoughton *vs.* Mott, 13 Vermont, page 175; Grant *vs.* Tams, 7 Monroe, page 218; Able *vs.* Bloomfield, 6 Texas, page 263; Smith *vs.* Dubuque, 1 Clark, page 492; Stearly's Appeal, 3 Grant, Pennsylvania, page 270; Ketland *vs.* Cassins, 2 Dallas, page 305; United States *vs.* Bedford Bridge, 1 Woodbury & Minot, page 401.)

In United States *vs.* Bedford Bridge, 1 Woodbury & Minot, 405, on the trial the defendant's counsel moved to quash the indictment, for that the court had no jurisdiction. The court said:

> And if for that or any other reason it should appear to this court a question of real doubt whether it possesses any jurisdiction in such a case over the subject-matter, it will be its duty not to proceed further in the trial. (2 Gallison, 325.) Because, being a court of limited jurisdiction, it cannot transcend those limits, *though the parties* make no objection, but is bound itself to pause. (2 Cranch, 125; 12 Peters, 719; 1 Peters Circuit Court, 36.) And in any stage of the case. (4 Washington Circuit Court, page 84; Davison *vs.* Champlin, 7 Connecticut, page 244; Perkins *vs.* Perkins, 7 Connecticut, page 559.)

In Maissonaire *vs.* Keating, 2 Gallison, 245, Story, justice, says:

> I will only add that if I had thought the case not cognizable at common law, the circumstance that the objection was not pleaded in abatement would have had no weight with me. Where the subject-matter is not within the jurisdiction of the court the exception may be taken under the general issue.

In the celebrated Dred Scott case, in 19 Howard, 393, the defendant in the court below interposed a plea to the jurisdiction, to which the plaintiff demurred. The court sustained the demurrer and overruled the plea, and gave judgment that the defendant should answer over.

The defendant thereupon put in sundry pleas in bar, upon which issues were joined; and at the trial the judgment and verdict were in the defendant's favor. Whereupon the plaintiff brought writ of error.

In the Supreme Court it was claimed that inasmuch as the judgment in the court below was in favor of the plaintiff, he could not complain of it in the Supreme Court; and the defendant, by pleading over, had waived it. Disposing of this objection, the court held that the question of jurisdiction was not waived by pleading over in the court below, but was legitimately before the Supreme Court on the writ of error. And Mr. Justice Curtis, although dissenting from the opinion of the court on the slavery question involved in the decision, concurred with the court upon this question, and said, (pages 565, 566:)

> When that plea was adjudged insufficient the defendant was obliged to answer over. He had no alternative. He could not stop the further progress of the case in the circuit court by a writ of error, on which the sufficiency of his plea to the jurisdiction could be tried in this court, because the judgment on that plea was not final, and no writ of error would lie. He was forced to plead to the merits. It cannot be true, then, that he waived the benefit of his plea to the jurisdiction by answering over. Waiver includes consent. Here there was no consent. And if the benefit of the plea was finally lost, it must be not by any waiver, but because the laws of the United States have not provided any mode of reviewing the decision of the circuit court on such a plea when that decision is against the defendant. This is not the law. Whether the decision of the circuit court on a plea to the jurisdiction be against the plaintiff or against the defendant, the losing party may have any alleged error in law, in ruling such a plea, examined in this court on a writ of error, when the matter in controversy exceeds the sum or value of $2,000. If the decision be against the plaintiff, and his suit dismissed for want of jurisdiction, the judgment is technically final, and he may at once sue out his writ of error. (Mollan *vs.* Torrance, 9 Wheaton, 537.) If the decision be against the defendant, though he must answer over and wait for a final judgment in the cause, he may then have his writ of error, and upon it obtain the judgment of this court on any question of law apparent on the record touching the jurisdiction. If this were not so the condition of the two parties would be grossly unequal. For if a plea to the jurisdiction were ruled against the plaintiff he could at once take his writ of error and have the ruling reviewed here; while, if the same plea were ruled against the defendant, he must not only wait for a final judgment, but could in no event have the ruling of the circuit court upon the plea reviewed by this court. I know of no ground for saying that the laws of the United States have thus discriminated between the parties to a suit in its courts.

A writ of error lies only to the *final* judgment of the court below, and such only is the judgment which can be reviewed in the Supreme Court. But the rendition of every judgment is, in itself, an assertion of jurisdiction. And therefore, although in that case the writ of error reached nothing but the final judgment, the question of jurisdiction was held to be before the Supreme Court; and, of course, if the court below at the time of rendering final judgment had been of opinion that it had no jurisdiction, it would have so decided and dismissed the cause. In other words, the erroneous decision in the court below upon the question of jurisdiction raised by the plea to the jurisdiction was an inherent defect in the final judgment, which enabled the Supreme Court to reverse the judgment upon that ground.

It is thus apparent that the question of jurisdiction never can be eliminated from the essential elements of the judgment.

This reference to authorities brings me to the question of jurisdiction in this cause.

The Constitution provides, that

> No person shall be convicted [on impeachment] without the *concurrence* of two thirds of the members present.

Concurrence means more than occasional union of minds. The word signifies *running along with each other*. That is, no person can be convicted without the agreement of two-thirds of the members present upon every point necessary to and included in the conviction.

Now in order to a conviction in this case several things are necessary: first, that certain acts have been done or omitted; second, that the acts done or omitted amount to treason, bribery, or other high crimes or misdemeanor, within the provisions of the Constitution; and third, that the acts were done or omitted by a person subject to the jurisdiction of the Senate to try on impeachment.

The respondent, therefore, cannot be convicted, unless two-thirds of the Senators present at the time of conviction concur in affirming all these propositions.

I do not propose to argue again the main question, whether impeachment can be maintained against a person not in office at the commencement of the impeachment proceedings. The imperfect argument I made, prepared in the insufficient time permitted by the court, I could strengthen in many respects, and support by additional authorities. But I know the question has occupied the attention of the court in consultation, and it would be presumption to suppose that I could add anything to what has been expressed by the many learned Senators who have delivered their opinions and given their votes against such jurisdiction. But I shall submit a few considerations against the idea that any one of the foregoing propositions necessary to conviction, and especially the question of jurisdiction, can be determined by less than two-thirds of the Senators present at the time of the conviction.

It will not be denied that had the respondent seen fit, when first called to the bar of the Senate, to plead "not guilty," and the trial had proceeded immediately, every proposition necessary to conviction must have been determined in the final judgment, and that no Senator would have voted to convict the respondent who did not believe the Senate had jurisdiction to try him. One Senator might have believed there was no such jurisdiction, and have been opposed to the respondent upon all other propositions in the case. Another Senator might have believed there was jurisdiction to try the case, but that the respondent had not committed the acts charged. But certainly both these Senators would have been compelled to vote against conviction; that is, to vote "not guilty," or, in other words, not guilty of anything for which the Senate could convict him. Nothing is more common in the decisions of courts of law than judgments concurred in by all the judges, but so concurred in upon different and sometimes conflicting grounds. A suit for divorce was recently dismissed by a court of two judges; one judge holding upon the proofs that neither the husband nor wife had been guilty of infidelity, and the other, that both had been. In either case the divorce must be denied; and, therefore, both judges concurred that the suit should be dismissed.

But it will be claimed that inasmuch as the pleadings adopted by the respondent submitted to the court the question of jurisdiction apart from the question of guilt or innocence of the acts complained of, and that a majority, but not two-thirds, of the Senate were of opinion that jurisdiction existed, therefore the question of jurisdiction is eliminated from the matters to be considered at the time of passing final judgment; and that if more than two-thirds of the Senators present at the time of final judgment believe that the defendant did commit the acts complained of, although less than two-thirds have not jurisdiction to convict him, nevertheless he must be convicted. In other words, although at the time of final judgment more than a third of the Senators present believe the Senate has no jurisdiction of the case—notwithstanding those Senators are under oath to decide impartially and according to the law—they must surrender their conscientious convictions in deference to the opinions of other Senators expressed upon a former occasion. And assuming that all the Senators entertain to-day the same opinions before expressed, this question may be decisive of the case. But I submit, there are many sufficient reasons against such proposition.

In the first place, the whole system of common-law pleading has grown out of the experience of the courts and their desire to promote the speedy termination of suits. And because no judgment can be rendered in any cause over which the court has not jurisdiction both of the parties and the subject-matter, and the trial might be fruitless, it has been ordained that the defendant shall *first* plead to the jurisdiction. And where the court has jurisdiction of the subject-matter, and the want of jurisdiction arises from mere personal privilege of the defendant—for instance, to be sued in a certain court or in a certain county—the defendant must plead to the jurisdiction, and waives his privilege by a general appearance. Next to the plea to the jurisdiction comes the plea in abatement proper—that, for instance, the

defendant is sued by a wrong name. Next comes a demurrer, then pleas in bar, &c. This order of pleading is entirely artificial; intended merely to promote the convenience of the court and save expense to the parties.

But, as I have shown from the authorities already read, where the defect of jurisdiction does not rest upon personal privilege of the defendant, but concerns the subject-matter, or the power of the court to try a particular class of persons to which the defendant does not belong—even, at the common law, omitting to plead to the jurisdiction, or even a written consent to the jurisdiction, will not authorize a court to proceed; and any judgment it may render is absolutely void.

But in the courts of the United States, which are courts of limited or special jurisdiction, the record must affirmatively show, and the fact must be, that the court has jurisdiction, or it can render no judgment. And the objection may be taken at any stage of the proceeding, either on the trial or in arrest of judgment, in both civil and criminal causes.

To quote from the decision of the Supreme Court in Rhode Island *vs.* Massachusetts, 12 Peters, 718:

> And whether the want or excess of power is objected by a party, or is apparent to the court, it must surcease its action or proceed extrajudicially.

Now, to apply these principles to this case, suppose the respondent had not pleaded to the jurisdiction, but had filed a stipulation stating that he was Secretary of War at the time of the impeachment, and had pleaded in denial of the acts charged; and the truth had not come to the knowledge of the court until to-day, after the completion of the trial, and the court was ready to pronounce judgment, would not every Senator who believes there is no jurisdiction here, be bound to treat it as a moot case and dismiss it at once? The authorities I have read settle this question. Consent cannot confer jurisdiction, and whenever the defect comes to the mind of the court, "it must *surcease its action* or proceed *extrajudicially*."

Now, if the respondent could not by written consent confer jurisdiction; if the respondent desiring a trial upon the question of fact, could not by filing a false admission of facts necessary to jurisdiction, either compel or authorize Senators who believe there is no jurisdiction to pass judgment upon the merits of the case, then I desire to know how it is to be maintained that by objecting to the jurisdiction he has imposed that duty or conferred that power? Can an objection to the jurisdiction of the court confer jurisdiction, while express consent cannot?

Of course these considerations are addressed to those Senators who still believe there is no jurisdiction to try and determine this case, and who are now invited to surrender their own convictions and vote according to the convictions of other Senators. If there was no jurisdiction when that plea was filed, there is none to-day, and there cannot be without an amendment of the Constitution. A majority of the Senate cannot change the Constitution, nor can a majority of the Senate relieve any Senator from the obligations of his oath as a Senator to support the Constitution, nor from the obligations of his oath as a judge in this case, to decide impartially and according to law. The decision of the Supreme Court in the Dred Scott case, which upon this point was unanimous, and enforced by Judge Curtis in even stronger terms than those employed by the Chief Justice in delivering the opinion of the court; sustained by reason and an unbroken current of authorities; is conclusive upon this subject, and settles the law for all the judicial courts of the United States. The defendant's objection in the court below was overruled there, but the judgment was in his favor on the merits, and he could not prosecute a writ of error. The decision on the question of jurisdiction was in favor of the plaintiff; therefore he could not object to it, and did not. But the writ of error brought the whole record before the Supreme Court, and it showed the facts upon which the question of jurisdiction depended in the court below. And the court held, and Judge Curtis, who dissented upon other parts of the case, concurred in holding, that the jurisdictional question was presented to the Supreme Court, and must be determined. The court held that there was no jurisdiction. Judge Curtis held that there was. But both held that if there was no jurisdiction in the court below, it was fatal to the judgment, even had neither party raised the objection.

The principle of the decision is this, that whenever it is discovered in any cause pending in the courts of the United States, original or appellate, that there is no jurisdiction, the suit must stop, and any order or judgment rendered must fall to the ground.

If there were an appellate tribunal which could review the proceedings of this court in this cause—and if this court, having decided erroneously on the plea to the jurisdiction, should proceed and render final judgment against the respondent—this case would be on all fours with the Dred Scott case in this particular; and the appellate court would, under the authority of the Dred Scott case, reverse the final judgment because of the erroneous decision on the question of jurisdiction.

It cannot be maintained, I submit, that judges of this court are authorized to consent, or excusable for consenting, to an erroneous judgment, because no tribunal can review the proceedings here. On the contrary, this is one of the strongest reasons that can be urged why every judge of this court should do everything in his power to prevent the rendition of a judgment tainted with remediless error.

The decision in the Dred Scott case has never been popular so far as it invalidated the great ordinance of freedom; and in that respect was reversed by the fourteenth amendment of the Constitution. But so far as it declared the principle in regard to jurisdiction, it has never been doubted or questioned, is authority to-day in all the courts of the United States, and enunciates a principle observed in all courts, English and American.

The authorities cited show clearly that the question of jurisdiction is a pertinent, pending, vital question down to and including the last act performed in any judicial proceeding. But this is not all. It continues after final judgment, and may be raised in any other court or place where the judgment is sought to be enforced. There is no difference in this respect between the courts of superior and inferior jurisdiction.

In Voorhies *vs.* Bank, 10 Peters, 474, the court, speaking of their own judgments, say:

> If not warranted by the Constitution or laws of the land, *our* most solemn proceeding can confer no right which is denied to any judicial act under color of law which can properly have been deemed to have been done *coram non judice*; that is, by persons assuming the judicial function in a given case without lawful authority.

And the court declared that in this respect there was no difference between its judgments and those of a county court or justice of the peace.

In support of the general proposition that the judgment of the highest court, if rendered without jurisdiction, is a nullity, and may be declared so by any court where the same may be sought to be enforced or be brought collaterally into question, I cite as follows: Knowles *vs.* Gas-Light Company, 19 Wallace, 58; Williamson *vs.* Berry, 8 Howard, 498; Wilcox *vs.* Jackson, 13 Peters, 499; Schrivner's Lessee *vs.* Lynn, 2 Howard, 99; Lessee of Hickey *vs.* Stewart, 3 Howard, 750; Starbuck *vs.* Murray, 5 Wendell, 48.

From this it follows that should this court entertain jurisdiction in this case, and pronounce judgment of disability, such judgment would not be respected by the judicial tribunals, should they be of opinion that this court had no such jurisdiction.

Should General Belknap return to Iowa and be elected to the House of Representatives, that House being the exclusive judge of the qualification and election of its own members, might be called upon to pass upon the question of his eligibility. And if, in the opinion of the then House, this court had no jurisdiction, it would be the duty of the House to disregard the judgment of disqualification and seat General Belknap. Or should the Postmaster-General appoint him as postmaster in a case not requiring the advice and consent of the Senate; or should a judicial court appoint him as clerk, and a *quo warranto* should be prosecuted to oust him, on the ground of ineligibility imposed by the judgment of this court in this cause, such judgment might be attacked for want of jurisdiction; and thus the jurisdiction of this court might be subjected to judicial review. Borrowing the language of the court in Voorhies *vs.* Bank, before cited, the judgment of the most exalted tribunal, if rendered without jurisdiction, is *mere waste-paper*.

Thus far I have endeavored to establish by authorities that the question of jurisdiction exists at every step of any judicial proceeding, and that no judge can concur in or consent to a judgment against the defendant in any cause, civil or criminal, who does not at the time of so consenting believe that the court of which he is a member has jurisdiction to hear, try, and determine the cause.

It will be conceded, I presume, that no Senator can properly vote for conviction unless he is convinced at the time of so voting of the existence of every condition essential to conviction, and the question of jurisdiction is the chief of these conditions.

And it follows, necessarily, that no Senator who believes that there is no jurisdiction can vote for conviction.

It may be said that in a criminal cause in a court of law, after the court has determined that there is jurisdiction, the jury have only to determine whether or not the defendant committed the acts charged in the indictment. The answer to this proposition is that it has no application to this case. The Senate is no more a jury to-day than it was when it heard and determined the demurrer to the plea in abatement, and is as much a court to-day as it was then. There is not the slightest analogy between this trial and a jury trial in a court of law. The Senate performs the functions of both court and jury. A respondent may be brought here for trial, and may find in this body a Senator who has been his life-long, implacable foe. He cannot challenge him. The *jury* before whom a person is to be tried must be of the State and district in which the crime was committed. But a postmaster from Florida may be impeached, and the casting vote against him be given by a Senator from Oregon. There is nothing so dangerous in reasoning as false analogies, and the slightest circumstance may vitiate a supposed analogy. This is a trial *sui generis*. It has more resemblance to a suit in equity than to a criminal trial at common law, because here, as in a court of equity, the court, without a jury, must find the facts and apply the law.

The Senate must determine the question of jurisdiction; determine whether the acts charged to have been done or omitted constitute a high crime or misdemeanor within the meaning of the Constitution; and whether, in fact, the acts charged have been done or omitted.

All these questions must be determined by the court against the respondent before he can be convicted, and upon every one of them two-thirds of the Senators *present* must agree.

This proposition seems to me so plain that I fear I may obscure it by attempting to render it plainer.

Is it not evident that whether these propositions are presented one after the other, by successive pleadings; *first*, by plea to the jurisdiction; *second*, by demurrer to the articles; and *third*, by answer denying the commission or omission of the acts charged; or whether all three shall be precipitated upon the court at once, by plea, in the first instance, of "not guilty"—is matter of practice—of form, not substance? And how can it be pretended that, in case these questions are separated, one or more of them may be settled and determined against the respondent by a mere *majority* of the Senate, while it will be conceded that, had the other form of proceeding been pursued, there must have been the concurrence of two-thirds of the Senate upon each one of these propositions?

In the trial of a criminal cause in a court of law the twelve jurymen must concur in a verdict. Suppose a man indicted for murder—the defense, insanity. The judge would instruct the jury that they must pass upon two questions: (1) whether the defendant killed the deceased, (2) whether the defendant was sane or insane when he committed the act; and (3) that they must all concur against the defendant upon both propositions before they could find a verdict of "guilty." The jury retire to consider the case, and they take a vote first upon the question of insanity. Seven believe the defendant to have been sane, and five believe him to have been insane. Will any one claim that the majority of seven could insist that they had determined the question of sanity, and that the jury should then proceed to vote upon the, perhaps conceded, question, Did the defendant slay the deceased?

Suppose another case of trial for murder, with plea "not guilty," under which two defenses are made: First, that the defendant did not kill the deceased, and second, that the fatal blow, by whomsoever inflicted, was inflicted across the line, in another State—which latter defense would raise the question of the jurisdiction of the court. Could the jury first vote on the question of *locus*, and if a bare majority were against the defendant upon that question, could that majority claim that the question of jurisdiction was settled, and that the verdict of *guilty* or *not guilty* must depend upon the settlement of the other question? Or could the minority satisfy their consciences, and agree to a verdict of "guilty," still believing the crime was committed without the State?

In a case like the last supposed the defendant might first raise the question of jurisdiction by a proper plea, and the question of fact would then have to be determined by a jury. In such case it will be conceded that no verdict could be rendered without the concurrence of all the jurors. If, on the trial of this issue, it should be found against the defendant, he might then plead "not guilty," and under that plea raise the question whether he killed the deceased. And here again, of course, all the jurors must concur in a verdict against him. Or he may plead "not guilty" in the first instance, and raise both questions on the same trial; and, of course, the jury must concur against him upon both points, or he cannot be convicted.

In such case of trial before a jury, no matter how many questions are involved in the trial, they are all found one way or the other, by the general verdict of guilty or not guilty. If the jury return a verdict of guilty, in a case like that last supposed, they thereby declare that—

(1.) The defendant did kill the deceased.

(2.) That he killed the deceased within the jurisdiction of the court; and

(3.) That the defendant was of sound mind and memory when he committed the act.

In such case if five jurors who really believe that the act was committed without the jurisdiction, or that the defendant was insane, come into court agreeing to a verdict of guilty, they are forsworn.

It being certain that no man can be convicted by a court which has no jurisdiction, it must follow that, whenever that question has been determined by the court, "the court must *surcease its action* or proceed *extrajudicially*."

Therefore, if it be contended that the question of jurisdiction has been eliminated from the questions entering into the final judgment, by the action of the court upon the plea to the jurisdiction, then it must be admitted by those who so contend that this question has been settled in favor of the respondent, because less than two-thirds of the Senators present declared in favor of jurisdiction, and more than one-third of the Senate declared there was no jurisdiction. If this was a settlement of one of the questions essential to final judgment, then it was certainly settled in favor of the respondent by the vote of the Senate on that question; and inasmuch as two-thirds of the Senators present did not concur in sustaining jurisdiction, jurisdiction was not sustained, but was denied, and all subsequent proceedings are void.

Ordinarily a majority of any court or tribunal are authorized to express the views and render the judgment of such court or tribunal. But in impeachment cases two-thirds of the court must concur to convict the defendant, and must of course concur in the determination of every question upon which conviction depends. Therefore one of two things is certain: if the question of jurisdiction, vital to conviction, was eliminated from the final hearing by the vote of the court upon the plea to the jurisdiction, then that question has been determined by the court in favor of the respondent, and there can be no conviction, because no court can convict without jurisdiction. If the question of jurisdiction has not been thus eliminated and settled in favor of the respondent, it remains a pending question to-day—a question entering into and constituting a vital element of the judgment now to be pronounced; and no Senator who believes there is no jurisdiction can vote for conviction.

In conclusion, submitting to this court on behalf of the respondent a cause involving far more than his life—his character, and his honor;—involving the happiness or misery of all those connected with him by such tender ties that their hearts must bleed if he be stricken; a cause the issue of which must determine whether he shall transmit to his children a memory to be cherished, or a reputation from which they shall shrink, I feel justified in appealing not only to the intelligence but to the conscience of every Senator.

The Constitution protects the respondent from such calamitous results, except upon the concurrence of two-thirds of this body in regard to every question essential to conviction. And to you, Senators, who believe there is no jurisdiction here, I make my last and earnest appeal. You cannot surrender your conscientious convictions to the equally conscientious convictions of others.

You surely cannot consent to a judgment, which, to quote from Ex-Chancellor Brougham, in the celebrated case of O'Connell *vs.* The Queen, "Will go out without authority, and return without respect."

Mr. WRIGHT, (at one o'clock and forty-eight minutes p. m.) I understand it would be agreeable to the manager who is to close the argument to have a recess of about ten minutes. I move that a recess of ten minutes be taken.

Mr. PADDOCK and others. Say fifteen minutes.

Mr. WRIGHT. Very well; I will modify my motion and move that a recess of fifteen minutes be taken.

The motion was agreed to; and the Senate sitting for the trial of the impeachment took a recess for fifteen minutes, at the expiration of which time the Senate sitting for the trial resumed its session.

The PRESIDENT *pro tempore*. The Secretary will call the roll of the Senate.

The Secretary called the roll of the Senate; and, after some delay, thirty-seven Senators answered to their names.

The PRESIDENT *pro tempore*, (at two o'clock and fifteen minutes p. m.) A quorum is now present. The Senate is ready to proceed with the trial.

Mr. Manager LORD. Mr. President and Senators, in The People the Sovereigns, by James Monroe, the distinguished statesman says:

> The right of impeachment and of trial by the Legislature is the mainspring of the great machine of Government. It is the pivot on which it turns. If preserved in full vigor and exercised with perfect integrity, every branch will perform its duty, and the people be left to the performance of theirs, in the most simple form and with complete effect, as the sovereign power of the state. It is not believed that the right could be abused by the Legislature.

In these observations of that illustrious statesman I have said all I desire to say on the importance of this question now before the highest court of the land, and as to maintaining the power of impeachment, in a proper case, in its full force and vigor.

I shall proceed, Senators, as briefly as I can, in the first instance to review the law of this case, endeavoring to avoid that which has already been sufficiently discussed, and yet necessarily, perhaps, repeating in some places.

The first position to which I call your attention is the sufficiency of the articles; and here let me say that in no point of this trial will the managers claim that you ought to convict the defendant of high crimes and misdemeanors unless the articles charge high crimes and misdemeanors. We do not stand here begging before the Senate. We do not ask you to convict on any doubtful construction. If the articles presented by the House of Representatives in the name of the people of the United States of America do not charge that which, if true, on your consciences requires the impeachment of this defendant, then in God's name let him go free. But, briefly, what do the articles charge? The learned counsel who have addressed you entirely differ. The distinguished counsel from Pennsylvania [Mr. Black] complains of the articles because they are too severe, because they charge offenses in language unnecessarily strong. The learned counsel from Wisconsin [Mr. Carpenter] says that they are not sufficient, and charge no offense. If I understand him rightly, he claims no offense whatever is charged; and he also says we have referred to no statute. I apprehend, Senators, that it would have been derogatory to this high court for us to have brought in merely a formal indictment. It was for us, from the plainest English language, to choose those words which would most distinctly and most clearly bring before your minds the facts and the offenses charged. In regard to ordinary criminal courts there is certain technical language required, but the rule has been very greatly relaxed even in courts of the lowest criminal jurisprudence. If there is any court on the face of the earth where we may distinctly charge the fact itself, certainly this is the court.

Now, what do we charge? Without reading these articles in full, we say—

> That * * * *in consideration of said appointment of said Evans so made by him as Secretary of War as aforesaid, the said Belknap did, on or about the 2d day of November, 1870, unlawfully and corruptly receive from said Caleb P. Marsh the sum of* $1,500; * * * the said William W. Belknap * * * *did unlawfully receive from said Caleb P. Marsh like sums of* $1,500 *in consideration of the appointment of the said John S. Evans by him, the said Belknap, as Secretary of War as aforesaid, and in consideration of his permitting said Evans to continue* to maintain the said trading establishment at said military post during that time.

Senators, is not this plain enough? Need we talk about intent? Need we go into all the technical language of criminal courts when we charge distinctly on the defendant that *in consideration* of the appointment of and *in consideration* of the continuance of said John S. Evans he did receive these various sums of money?

Again in article 2:

That said William W. Belknap * * * did * * * *willfully, corruptly, and unlawfully take and receive from one Caleb P. Marsh the sum of* $1,500, *in consideration that he would continue to permit one John S. Evans to maintain a trading establishment* at Fort Sill, a military post of the United States.

Again in article 3:

Yet the said Belknap, well knowing these facts, and having the power to remove said Evans from said position at any time, and to appoint some other person to maintain said trading establishment, but criminally disregarding his duty as Secretary of War, and basely prostituting his high office to his lust for private gain, did unlawfully and corruptly continue said Evans in said position.

Again in article 4:

That said William W. Belknap * * * *did receive from one Caleb P. Marsh large sums of money for and in consideration of his having so appointed said John S. Evans to maintain said trading establishment at said military post, and for continuing him therein*, whereby he has been guilty of high crimes and misdemeanors in his said office.

This article contains seventeen similar specifications. Finally, in article 5:

Yet said Belknap did, in consideration that he would permit said Evans to continue to maintain said trading establishment, *and in order that said payments might continue and be made by said Evans to said Marsh as aforesaid, corruptly receive from said Marsh, either to his, the said Belknap's, own use, or to be paid over to the wife of said Belknap, divers large sums of money at various times.*

This article charges the receipt by the defendant of sixteen other sums.

Now I repeat, if this Senate at any period of its deliberations should come to the conclusion that these articles do not charge against Mr. Belknap an impeachable offense, let it say so, and dismiss the whole proceeding.

I desire to call the attention of this Senate for a little while to the clause of the Constitution so much under consideration this morning, and that is the clause which requires the concurrence of two-thirds of the Senators present to convict. It is in these words: "No person shall be convicted without the concurrence of two-thirds of the members present." If I can establish to the Senate that the word "conviction" has a definite meaning, that it only refers to one point in the trial, it may be to several points if there are several articles of impeachment, but that it only refers to the time when you pass on the question of guilty or not guilty as to the offense or offenses charged, then all the logic of the counsel for the defendant in this regard falls to the ground, and their attempt to drag in a question of law already settled by this court, which must be the law of this court until it is reversed by its own action, will also utterly fall to the ground. While the Constitution has been often enough read, in order that I may point the minds of Senators directly to the meaning of this word, allow me again to read the clause of the Constitution in which it is found, and then let me ask you again to what point does this word "convicted" refer?

The Constitution, article 1, section 3, sixth clause, provides:

The Senate shall have the sole power to *try* all impeachments. * * * When the President of the United States is *tried*, the Chief Justice shall preside; and no person shall be *convicted* without the concurrence of *two-thirds* of the members present.

Here is a clause of the Constitution which provides for the *trial* and in one instance the mode of *trial* and then concludes by saying: "And no person shall be *convicted* without the concurrence of two-thirds of the members present." When the word "trial" is in this section, when the judgment is thereinafter provided for, can there be any question but that the word "conviction" points only to conviction on the questions of fact? This is the great question for the defendant. What in the eye of the world, what in the eye of history will be this question of jurisdiction and the questions of the admission of evidence and the other legal questions of the case as bearing on the character of General Belknap? Who will care in the present time or in the future, as regards his reputation, to look at any one of these legal questions? But it is an exceedingly important question to him to know whether he is infamous, whether for long years he has corrupted his hands with bribes. This is the important question. Whether this court has jurisdiction or not in one view is a matter of profound indifference. Whether any other legal question is settled rightly in this court or not is to the defendant, in any view, compared to the great question of his guilt or innocence, a matter of profound indifference; but whether his honor as an officer has been stained, whether he has degraded a place in the United States second only to one, is the question which is important to him and which in all the future brands him as a bad and corrupt man, or else if he is proved to be innocent restores him to the confidence of the people and to the respect of history.

I have brought in here, Senators, a few definitions of the word "conviction," closing with one which I apprehend will receive from this Senate high consideration. In the first place I go to the elementary books called "dictionaries:"

Conviction: The act of proving, finding, or determining to be *guilty of an offense* charged against a person before a legal tribunal.—*Webster.*

The act of convicting; detection of guilt.—*Worcester.*

Which conviction may accrue in two ways: either by his confessing the offense and pleading guilty or by his being found so by the verdict of his country. (Sharswood's Blackstone, book iv, page 363.)

I apprehend all the books may be searched through and through and no definition be found of the word "conviction" more satisfactory than that given by the learned Blackstone, which conviction, he says, may accrue in either one of two ways, either by the culprit confessing his guilt or being found guilty by a verdict of his country. What court is better described than this by these latter words? What court more represents the whole country than the Senate of the United States sitting as a court of impeachment? Therefore I have the highest authority for saying that the question referred to by the Constitution when it speaks of the defendant's being convicted is the question, is he guilty or not guilty of the offense or offenses charged against him in the articles of impeachment?

Senators, this learned body has construed the word "conviction" in reference to this question of two-thirds. I think I can demonstrate that the Senate has, over and over again, settled this question in regard to both the words conviction and concur. The Senate rules of the court of impeachment provide:

On the *final question whether the impeachment is sustained*, the yeas and nays shall be taken on each article of impeachment separately; and if the impeachment shall not, upon *any of the articles* presented, be sustained by the votes of *two-thirds* of the members present, a judgment of acquittal shall be entered; but if the person accused in such articles of impeachment shall be *convicted* upon any of said articles by the votes of *two-thirds* of the members present, the Senate shall proceed to pronounce *judgment*, and a certified copy of such judgment shall be deposited in the office of the Secretary of State.—*Rule* 22.

Senators, if I can demonstrate to you what this final question is; if I can demonstrate that these words "final question" refer to the question of guilty or not guilty, then I find a senatorial construction which should settle the point even if it were possible to make the word "convicted" refer to any other point of the trial than the verdict. The reference to the word "convicted" in this rule shows conclusively that the "final question" referred to therein is the final question "guilty or not guilty" of the offense or offenses charged in the articles of impeachment.

Rule 23 provides:

All the orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, and without debate, subject, however, to the operation of Rule 7, except *when the doors shall be closed for deliberation, and in that case no member shall speak more than once on one question, and for not more than ten minutes on an interlocutory question, and for not more than fifteen minutes on the final question*, unless by consent of the Senate, to be had without debate; but a motion to adjourn may be decided without the yeas and nays, unless they be demanded by one-fifth of the members present. The fifteen minutes herein allowed shall be for the whole deliberation *on the final question*, and not to the *final question on each article of impeachment.*

Is there any doubt as to what Rule 23 means? Can it be construed without holding that the final question referred to therein is the question of guilty or not guilty of the offense charged in the article or articles of impeachment? Does not any other construction make both of these rules meaningless?

Senator Sumner in the Johnson case proposed a rule in the preamble to which he stated the general law to be that a majority prevails. The order proposed is as follows:

Ordered, That after removal, which necessarily follows conviction, any question which may rise with regard to disqualification or any further judgment shall be determined by a majority of the members present.

I do not find that this proposed order was subsequently acted upon. I only bring it forward as the opinion of a distinguished Senator, which seemed to receive the acquiescence of the Senate. It would seem that it was deemed unnecessary to pass upon the order. I ask, Senators, if it be true that the two-thirds vote does not relate to the final judgment; if the final judgment of this tribunal—the great question so running with the defendant's life—to wit, the question of disqualification, is to be passed upon by a majority, is it not entirely clear that all preceding legal questions are also to be passed upon by a majority?

There are other constitutional constructions made by the Senate. I call attention to the clause of the Constitution relating to treaties:

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided *two-thirds* of the Senators present *concur.*—*Constitution*, article 2, section 2.

I now call the attention of this court to the argument of the counsel who has just closed. He claims that the word "concur" includes every proceeding from the commencement of the trial to its close, with certain exceptions relating to adjournment, &c. Now I propose to show by senatorial construction that the word "concur" has been defined by the Senate in regard to a treaty to mean just exactly what we claim the word means in regard to impeachment. The Senate will observe that the words are the same. The language in the one case is "provided two-thirds of the Senators present concur," and the words in the other case are "no person shall be convicted without the concurrence of two-thirds of the members present." What is the rule of the Senate? Senate Rule No. 38 (Barclay's Digest, pages 247, 248) is:

And on the *final question* to advise and consent to the ratification (of the treaty) in the form agreed to, the *concurrence* of *two-thirds* of the Senators present shall be requisite to determine it in the affimative; but *all other motions and questions thereon shall be decided by a majority vote.*

Is it not clear that this Senate in this regard has held that the word "concur" simply relates to one vote, and that the final vote, and that all other questions relating to the treaty or amendments to the treaty or to any other possible question that may arise in regard to it, excepting the final, definite, and conclusive vote of concurrence, are to be by a majority vote?

Again, as to constitutional amendments.

The Congress, whenever *two-thirds* of both Houses shall deem it necessary, shall propose amendments to this Constitution.—*Constitution*, article 5.

Senate Rule 44 provides—

When an amendment to be proposed to the Constitution is under consideration, the concurrence of *two-thirds* of the Senators present shall not be requisite to decide any question for amendments, or extending to the merits, being short of the *final* question. (Barclay's Digest, page 249.)

The constitutional amendments may come from the "House," having received a two-thirds vote there, and yet a majority may change and amend.

Therefore in all these cases this Senate has held that whenever a two-thirds vote is required there is but one final vote. Such is the Constitution; such is the construction of the Senate.

I call the attention of Senators to Senate Rule 20, the last clause, Barclay's Digest, page 238:

When any question may have been decided by the Senate in which *two-thirds* of the Senators present are necessary to carry the affirmative, any Senator who votes on that side which prevailed in the question may be at liberty to move for a reconsideration; and a motion for reconsideration shall be decided by a majority of votes.

Applying this rule to this case, say that two-thirds of the Senators had voted in favor of jurisdiction or that with entire unanimity this court had voted in favor of jurisdiction, yet at any time a majority may reverse the order or judgment. Assume again that this question had not been raised until after conviction and that this Senate had unanimously voted that the defendant was guilty of every charge contained in the articles of impeachment; yet any Senator could have risen in his place and said, "I doubt our jurisdiction;" and on the question being debated, if a majority of the Senate should find that the Senate did not have jurisdiction, the proceedings would be reversed and the case driven from the court. It is a rule that works both ways; and, therefore, the other day when a learned Senator inquired, "Is each Senator bound by this judgment under all circumstances?" we answered "No." We simply say that each Senator is bound by this judgment while it stands as the judgment of this court, and the majority which made the judgment can at any time reverse it.

In the case of Barnard, which perhaps has already been sufficiently referred to, ten members of the court, including three judges of the court of appeals and seven senators, voted that the court had no jurisdiction of certain charges relating to matters which had occurred before Judge Barnard was elected to the term of office which he was then holding; and yet every one of those ten members of the court who voted that the court had no jurisdiction in that case over those questions voted guilty, on the very articles charging the prior offenses, on the final vote, although overruled on the question of jurisdiction by a majority or more of the court.

At this point allow me to call attention to the order or judgment of this court in this case:

It is ordered by the Senate sitting for the trial of the articles of impeachment preferred by the House of Representatives against William W. Belknap, late Secretary of War, that the demurrer of said William W. Belknap to the replication of the House of Representatives to the plea to the jurisdiction filed by said Belknap be, and the same hereby is, overruled; *and, it being the opinion of the Senate that said plea is insufficient in law and that said articles of impeachment are sufficient in law, it is therefore further ordered and adjudged that said plea be, and the same hereby is, overruled and held for naught;" which judgment thus pronounced shall be entered upon the journal of the Senate sitting as aforesaid.*

I repeat, Senators, this judgment binds every Senator while it is the judgment of this court. It only binds him while a majority says it shall. Assume that two-thirds had voted in favor of jurisdiction, would it change the opinions or ease the consciences of the non-concurring Senators? Would not those learned Senators who on this question think they ought not to be bound have the same opinion and have precisely the same view of the case that they have now, had the vote in favor of jurisdiction been two-thirds instead of a majority of the Senate?

Allow me to call attention for a few moments to the independent existence of this court. This court is organized under the Constitution. It may adjourn from day to day, without reference to the other House. It may sit when the Congress is not in session. This is established by its every-day practice. It has frequently adjourned more than three days. But, however this may be, it has the powers of any other court. Whoever heard of a court being prevented from the exercise of its functions by a minority? The precedents are all one way, the authorities are all one way. But assume that the court must look to the Senate for authority, then the rules hereafter to be referred to confer the most abundant authority, though the robes are changed from the legislative to the judicial. I desire to call the attention of the Senate briefly to some elementary authorities on this subject:

Every corporate act must be done at a meeting, either of the whole body-politic or of such select body as may have confided to it by the Constitution the performance of such act, which meeting must be duly convened by proper summons, and must be held in the usual place of meeting, the question being (in all cases not expressly provided for by the constitution of the corporation) decided by a majority of those present at the meeting and voting on the question. Those who do not choose to vote upon the question before the meeting, or who vote on any other question, are considered to vote with the majority of the voters on the real question, and so of those who are absent." (Grant on Corporations, page 54.)

After an election has been properly proposed, whoever has a majority of those who vote, the assembly being sufficient, is elected, although the majority of the entire assembly altogether abstain from voting; because their presence suffices to constitute the elective body, and if they neglect to vote it is their own fault, and shall not invalidate the act of others, but be construed an assent to the determination of the majority of those who do vote. And such an election is valid, though the majority of those whose presence is necessary to the assembly protest against any election at that time, or even the election of the individual who has a majority of votes. The only manner in which they can effectually prevent his election is by voting for some other qualified person. (Angell and Ames on Corporations, page 98.)

That wherever a power of election is vested in a definite number, quorum A and B are to be two, the presence only of A and B, and not their assent, is requisite to make a valid election. (Abbott's Digest, Law of Corporations, page 595, section 13. See Reg. *vs.* Bailiffs, &c., of Ipswich, 2 Lord Raymond, page 1232; Cotton *vs.* Davis, 1 Strange, page 53.)

I have already said that the vital question to the defendant is the question of guilt or innocence. All legal questions therefore may, without injustice to him, be decided by a majority. Any fact involving jurisdiction must present a legal question, and there is no reason in the law or in common sense why a jurisdictional question should not be decided by a majority. I affirm that the Constitution, in its tender regard for the accused person, had no thought of any legal question. A jury must be unanimous in this country; in Scotland three-fourths are required; and those who made the Constitution thought that to allow a mere majority of the Senate to convict on a question involving a man's character, and sending him down perhaps with infamy to the future, would be unjust; and therefore a two-thirds vote was required on that question, and on that question only.

Perhaps the most *important legal question* the defendant could have presented on this trial was his own competency as a witness and that of his wife; and yet it is conceded that this question could have been settled *against* the defendant by a majority vote.

Assume that the question of jurisdiction had turned on the precedence of a *judicial act*, (*not any act, as erroneously assumed by a Senator,*) which precedence is sustained by all English and American authorities, would the question of fact whether the resignation was on the same day, on which fact the jurisdiction would turn, require a two-thirds vote? Or, had jurisdiction been held on the priority of the proceedings of the House, would the fact have had to be settled by a two-thirds vote? Or, had it turned on the defendant's resignation to evade impeachment, would the jurisdictional fact require a similar vote? Is it not clear that both the Constitution and the reason therefor concur in sustaining the position that the two-thirds vote of the Constitution is only required on the questions involving *the truth of the charge and the character of the accused?* I call the attention of Senators to Rule 16 of the Senate, Brightly's Digest, page 237:

When the yeas and nays shall be called for by one-fifth of the Senators present, each Senator called upon shall, *unless for special reasons he be excused by the Senate*, declare openly, and without debate, his assent or dissent to the question.

Also to the Senate rule for the court of impeachment:

VI. *The Senate shall have power* to compel the attendance of witnesses; *to enforce obedience to its orders*, mandates, writs, precepts, and judgments; to preserve order, and to punish in a summary way contempts of, and disobedience to, its authority, orders, mandates, writs, precepts, or judgments; *and to make all lawful orders, rules, and regulations which it may deem essential or conducive to the ends of justice.* And the Sergeant-at-Arms, under the direction of the Senate, may employ such aid and assistance as may be necessary to enforce, execute, and carry into effect the lawful orders, mandates, writs, and precepts of the Senate

We show the power of the Senate. It is not for us to point the mode of its exercise. We believe the Senate will act pursuant to the oath prescribed by Rule 24:

Form of oath to be administered to the members of the Senate sitting in the trial of impeachments:

I solemnly swear (or affirm, as the case may be) that in all things appertaining to the trial of the impeachment of ——— ———, now pending, I will do impartial justice according to the Constitution and laws: So help me God.

In May on Parliamentary Law we find the following suggestion, which may possibly be of some benefit, in one contingency, to the Senate:

The vote of the Lord on the woolsack or in the chair is taken first in the house. (May's Law of Parliament, page 337.)

In the Upper House, Lords who desire to avoid voting may withdraw to the woolsacks, where they are not strictly within the house, and are not therefore counted in the division. (May's Law of Parliament, page 343.)

The woolsack, indeed, is not strictly within the house, for the Lords may not speak from that part of the chamber; and if they sit there during a division, their votes are not reckoned. (Ibid. page 217.)

This is all, Senators, that the managers deem it necessary to say upon the questions of law which are presented to you.

Mr. CONKLING. Will it interrupt the manager, as he has concluded on this point, to ask him a question?

Mr. Manager LORD. Not at all.

Mr. CONKLING. Suppose on a trial of impeachment the objection should be interposed that the acts alleged are not in law impeachable. We shall all agree that they must be impeachable to be the subject of impeachment; indictable to be the subject of indictment. Suppose the point is raised that the acts charged in the articles are not in law impeachable and the tribunal proceeds in the first instance to consider that question. A majority, less than two-thirds vote that the acts charged are in law impeachable, that drunkenness, if that be the charge, is impeachable although no statute denounces drunkenness as a crime. My question is whether, in the opinion of the managers, the minority in that case would be bound by that as matter of law, so that on the final vote, although each man in the minority might on his conscience believe that those acts are not in law impeachable, he would nevertheless be under obligation to vote in the language of Rule 24 that the articles are sustained?

Mr. Manager LORD. If I understand the Senator, I answer him in this way: If this court settles that a particular offense is impeachable, however it may differ with the opinion of an individual Senator when he is called upon to vote on the question of guilty or not guilty on the act of drunkenness, to use the Senator's illustration, his only duty is to vote one way or the other, or, if he chooses, perhaps, not vote at all. What the managers claim is that this word "conviction" only refers to a solitary point in the case, and that is to the time when Senators are called upon to say, "Is the defendant guilty or not guilty of the offense or offenses charged in the articles of impeachment?"

Mr. CONKLING. Then, if I may a step further understand the manager, the argument is that a Senator who votes whether an article is sustained or not simply votes upon the question whether in fact the person named did that act, and if he finds that he did his vote must be in the affirmative, or guilty, although he may believe on his oath, first that the act, if done, is not impeachable, and second that the person who did it is not himself the subject of impeachment.

Mr. Manager LORD. If the learned Senator will allow me to correct his language a little in regard to his opening, he says "on the question is the article to be sustained."

Mr. CONKLING. That is what the rule is.

Mr. Manager LORD. The Constitution is that two-thirds shall concur in the conviction; and our position is, right or wrong, that all legal questions are to be settled by a majority. Whether the Senate has jurisdiction is a question to be settled by the majority. Whether drunkenness is an impeachable offense or not is a question to be settled by the majority. That majority, as I had occasion to say when the learned Senator was out, may be reversed at any time. It is not a matter that binds the Senator or any Senator except while it remains the judgment of the Senate; and if the Senators should go on and unanimously find a man guilty of an offense, the question of jurisdiction may be raised after that and the whole matter dismissed from the tribunal by a mere majority vote. Therefore, I answer the Senator that in my view of the Constitution the Senator or any other Senator has nothing to do when he comes to vote except to say "Is the person guilty or not guilty of the offense charged in the articles of impeachment?" Whether in his judgment that offense is impeachable or not is a question, in our judgment, with which he has profoundly nothing to do, because the Constitution simply points him to one thing, and that is, was the defendant, taking the illustration given by the learned Senator, drunk or not?

It has been suggested by an associate manager, which is true, that when the Senate comes to act upon the question of its former order and undertakes to reverse its action, it must act upon that question alone, and not complicate it with the consideration of the facts involved in the articles of impeachment.

Much more might be said on this question relating to the two-thirds vote, but enough has been said to show the views of the managers. I do not propose in the least to reconsider the arguments which have been made relating to the question of jurisdiction, but submit the law questions of the case with the observations which I have made and with the arguments which have hitherto been presented.

I desire to call the attention of Senators during the remaining part of my argument to the questions of fact, avoiding as far as possible what has been already so ably said; and yet in order to get through the case understandingly, I must in some degree refer to what has been already stated.

The first question, and which is rather a question of law than of fact, is, What is bribery? Do these articles charge bribery? What is the essence of bribery? Is it not anything given to an officer to influence his judicial, his legislative, or his official conduct? If you find that a man has received anything from a third person to influence and which has influenced his conduct, this is bribery; and, as was well said the other day, it is bribery although the person who receives the bribe makes up his mind that it shall not influence his judgment. That does not make a particle of difference. The law is wiser than any individual. A person may through a long series of years as a judge receive a thousand dollars a year from a particular suitor in the court, and every time he receives it he may make up his mind that it shall not influence his judgment. On bended knee, if the hypocrite can kneel before God, it may be his morning and evening orison that the thousand dollars may not influence his judgment. And yet if he receives that money under such circumstances and then proceeds to judgment, the law denounces it as bribery although in his heart of hearts he may believe that he has not been influenced at all by the bribe.

But I care not to discuss these questions in their elementary character. I say to you, Senators, that if under the circumstances of this case as detailed to you by the evidence you can find that William W. Belknap, late Secretary of War, did not receive money during these long years for the purpose of influencing his official action, then let him go free. If in the eyes of this nation, if in the eyes of the world, if in view of far-reaching history, this Senate dares take the responsibility of saying that during these long years the defendant received these sums of money and continued these men in office under these circumstances with pure motives—if they can say that these sums were all mere gifts, disassociated from anything like a bribe, let them say it and see what history will say of the verdict.

Now, if Senators please, in regard to the main transaction there is a great divergence between the learned counsel. The learned counsel [Mr. Black] assumes on the whole that there was a gift, and he proceeds to justify it by various other gifts. The learned counsel [Mr. Carpenter] proceeds on the theory that it was the property of the wife as the defendant supposed. Passing along we shall dwell somewhat upon each of these theories. In the first place, what is the brief history of the case? We have to say that the details of the original transaction are very much in the dark. Fraud always goes in the dark. Who wants to publish crime in daylight? What serpent in the grass rears its head unless it is compelled to strike?

In the first place, I call the attention of Senators to the fact (whatever weight it may have is for you to say) that the defendant in this action was the first to suggest this change of the law. Give this circumstance what consideration it deserves and nevertheless it is a fact in the case that the law, which before gave the appointment of these post-traderships to certain military commanders, was changed by a bill which originated in this Senate on the motion of a Senator who then and there stated that he acted at the request of the Secretary of War. Therefore we find this Secretary placing beneath his feet the foundation on which this fraud was afterward perpetrated.

Mr. BLAIR. Mr. President and Senators, I do not recollect any such evidence being introduced.

Mr. Manager LORD. It is in history; it is the record of the Senate. If the learned gentleman will look at the record of the Senate he will find it occurred on this floor. I apprehend that notwithstanding Senators have on their judicial robes they can look back to the records of the Senate, for it is still the Senate. I say it is recorded in this Senate.

Mr. Manager JENKS. Crosby swore to it.

Mr. Manager LORD. I also understood that Mr. Crosby swore to it. I was not present all the time that the testimony was taken; and therefore I throw myself upon the right to refer to the fact also because it is a part of the records of this body.

Mr. EDMUNDS. May I ask the manager a question? Does he claim that the statement in the RECORD of what a Senator said, or what a Senator in fact did say, is evidence of the charge that Mr. Belknap knew that the Senator was stating the matter correctly?

Mr. Manager LORD. Perhaps I shall have to answer the Senator, not directly legal evidence. I had assumed that what was part of the records of the Senate and had been for years uncontradicted would be received here. Then if the Senator is right, and I submit to his view not only because he is a member of the court but because on reflection I think he is right, I refer to the testimony of Mr. Crosby. I understand my colleagues to say that Mr. Crosby did state that this order was proposed at the suggestion of Mr. Belknap.

Mr. BLAIR. I do not recollect any such statement in the record.

Mr. Manager McMAHON. I will read it to the counsel.

Mr. EDMUNDS. On what page?

Mr. Manager McMAHON. On page 207 of the trial RECORD, in the examination of Crosby.

Mr. Manager McMAHON. I will put the question in this way. (To the witness.) Did he not take an interest in the passage of the law changing the appointment of post-traders as it did?

A. I suppose he did.

Q. (By Mr. Manager McMAHON.) Do you not know that he did?

A. I have not much recollection about it.

Q. Have you not testified that he did?

A. I do not recollect.

Q. Did you not testify before the board of managers that he did?

A. I do not recollect.

Q. Were you not sworn before the board of managers in their room in this building?

A. I was.

Q. Was not that question put to you?

A. I have no recollection of it. I may have said something in general terms; I do not recollect.

Q. What do you say now; did he not take an interest in having the law changed so as to vest the appointment of post-traders in himself?

A. To the best of my recollection he did take some interest.

Mr. Manager LORD. Senators, had I known that this point was to take so much time, and had I thought perhaps sufficiently on the effect of the record of the Senate, I might not have introduced it at all, for it is not an exceedingly important point. I only referred to it in a general way as lying at the foundation of the case, having proposed not to examine the evidence in detail but simply to bring it before you in a general way.

The next point to which I call your attention is the situation of Mr. Evans, the post-trader at Fort Sill. He was there with a large amount of property; as I recollect it, from $80,000 to $100,000. No complaints had ever been made of him. So far as I remember, he had the recommendation of every officer, high and low, at the post. There was no reason why he should not be re-appointed. There was every consideration why he should be re-appointed, having taken these goods off into that vast wilderness so far from civilization and having this amount of property there liable to sacrifice or destruction if removed. Certainly, if disturbed in his place, he would be subjected to immense loss, and he had high claims on the consideration of the Secretary of War. He sees the Secretary of War, and the Secretary of War tells him that he had promised this post to Mr. Marsh. Whether he had or not is for you to say. I care not to go over the ground again and call your attention to the discrepancy of the letters; but it is sufficient to say in the line of my argument that Mr.

Belknap, the defendant, told him to see Marsh. Finally it turns out that the defendant sent Marsh to see Evans, and then this contract between them was made. The next point of evidence to which I call your attention is a matter to which reference has perhaps already been sufficiently made. It has great significance. It shows precisely what Mr. Marsh thought Secretary Belknap knew and had agreed to. This is the letter:

NEW YORK CITY, *October* 8, 1870.

DEAR SIR: I have to ask that the appointment that you have given to me as post-trader at Fort Sill, Indian Territory, be made in the name of John S. Evans, as it would be more convenient for me to have him manage the business there at present.

Your obedient servant,

C. P. MARSH.

P. S.—Please send the appointment to me, 51 West Thirty-fifth street, New York City.

Hon. W. W. BELKNAP,
Secretary of War, Washington City.

Senators, I refer to this not only for the light which it throws on the transaction at the time, but I refer to it more for the light which it throws on the future transactions. To my mind this letter itself under the circumstances has in it the most conclusive evidence of the defendant's guilty knowledge of this whole transaction. Take this letter, hand it down into the then future, and see what was before the late Secretary of War all the years he was receiving these gifts, express package after express package, and writing upon them O. K., those joyful words signifying that all was well because all was secret. This letter was before his mind all the while, though "semi-officially" kept out of sight, in fact taken away from the War Office and falling into our hands by some strange proceeding unnecessary to detail. Here is a letter in which the English language could not put plainer the proposition that Mr. Marsh only is the post-trader, and is the man of power. He is the man of substance, and Evans is only a man of straw. Mr. Marsh says: "I desire the appointment that you have given to me to be made" not to John S. Evans, not assigned to John S. Evans, not transferred to John S. Evans, but "I desire it to be made in the name of John S. Evans." Would this uncertain and shrinking Marsh dare to have written the letter to the renowned Secretary if it had not been true? Had he not had some previous understanding with him that for a consideration the place at Fort Sill was to be his, and his only? Would he have dared to say to him, "Make out that appointment given to me not in my name, although I am the real party, but make it out in the name of John S. Evans?" Let me repeat: carry that letter right on through the transaction; assume, as you must assume, that General Belknap had that letter or its substance always in his mind; that he weighed well its words; that he understood its import perfectly; then is it not true, Senators, that whenever he received $1,500 or $700, as the case may be, he knew that he was receiving it from the *actual* post-trader at Fort Sill, the man whose word would have removed John S. Evans quicker than the lightning's flash from heaven? Is not this true? Is there a Senator here who dares to go down to history on the allegation that this is not true? Does not every Senator here know that the wave of the hand of Marsh, the making of the request by him that John S. Evans be removed, would be followed up instantly with his removal by the Secretary of War? Therefore, under these circumstances is it not true that every one of these sums of money received by General Belknap was received by him with the knowledge that it came from Marsh in consideration that he had appointed him through the delusive form of Evans, post-trader at Fort Sill?

In regard to one situated under the unfortunate circumstances that we find the defendant here, it is always painful to refer to things in his past life which to him must have been indescribably painful; and yet the cause of truth sometimes compels us to enter the death chamber. What do we find? We find $1,500 had been sent to General Belknap as Mr. Marsh thinks for his wife. I perhaps shall have something more to say about that presently. It was sent to General Belknap, and delivered to General Belknap, and then the wife dies. Mr. Marsh is found at the funeral, and he thinks that something was said to him by General Belknap on the question of this money. I am not going to dwell very much on this point; but how did Mr. Marsh come to this conclusion? He is the witness who undertook to exonerate General Belknap by a letter to the committee, the witness who had prepared a written statement to the Committee on War Expenditures which would entirely vindicate General Belknap if it had been true. How did this unwilling witness come to this conclusion—this witness who wanted to flee from justice, who begged to be permitted to cross the sea, and to whom General Belknap so truthfully said: "You cannot cross the sea without ruining me; it must not be known to the nation and to the world that you came here to Washington and then fled across the sea after an interview with me; go before the committee with your regard for me; go with your reticence; go with your power to conceal, and I am safe enough; far safer than though you flee across the sea and have it said that I persuaded you to leave the country?"

How did this unwilling witness, this witness who fled to Canada to avoid telling the truth, this witness who appears to you under all these circumstances, get it into his mind that he told General Belknap that night something about this money? Is not the answer in every one of your minds? Is not the evidence sufficient to legally convince you that General Belknap that night did say something in his quiet way about this matter, or else that Marsh spoke to him about it? How else, I ask you again, did this idea get into Mr. Marsh's mind, which he could not and cannot rid himself of? The ghost will stay by him; the belief will still be there; and yet when pressed and cross-examined by defendant's counsel, he can be led to say, "The more I think about it the less I know about it." Nevertheless I believe it is true, absolutely true, that on that night he and General Belknap did have some conference on this subject. And yet, perhaps, it is not important for you to decide this question, for as we proceed we shall show the most abundant evidence that General Belknap knew from whence this money came and for what purpose it came. I call the attention of the Senate to the fact that before the Tribune article, with which you are all familiar, was printed; before the letter from General Grierson, with which you are also familiar, was received; before General McDowell made that famous order, by which he seemed to know—guided by the Secretary, not by his own intent—how not to do a thing, General Belknap had received six payments sent to him periodically. Fifteen hundred dollars once and again and again had been sent to him by a man who had said to him, "I am the post-trader at Fort Sill; I hold you to the contract; I reserve the right to remove this shadow, Evans, whenever I see fit, but for the sake of my convenience I direct you to appoint him *pro tempore* in his name." I put it to the consciences of you Senators, as I have a right to do, after the long and elaborate arguments and appeals made by the most eloquent and ablest counsel of the nation—I say I have a right to put it to the conscience of each Senator, can you say to your conscience, to your judgment and belief, under this evidence, that General Belknap did not know when he received such sums of money that they came as an unhallowed offering from this post-trader?

Something has been said here that there was no injury to the soldiers and the emigrants. The witnesses all seem to be strangely under some influence; but no matter. The witness Evans said he did not put up the price of goods on account of these large payments, but after a while lowered the price of the goods. What nonsense this seems unexplained, though we may ask, What difference did it make, if true, with the crime of the defendant? But it did make a difference with the soldiers, according to the testimony of Mr. Evans. On cross-examination, he said the price of goods lowered because the freights lowered, and if those freights had not lowered and other causes had not transpired, then the $12,000 would have come out of the soldiers by an advance in prices; this $12,000, or rather in all $43,000, followed the laws of trade, and as the freights lowered the price of the goods lowered. If Mr. Evans had not been compelled to pay these moneys, as freights lowered the soldiers and emigrants would have had the advantage by a diminution in prices.

I now call attention to a turning-point in this case that, it seems to me, Senators cannot escape and will not desire to escape. You should acquit General Belknap if there is reasonable doubt of his guilt; not a mere possibility, not a mere phantasy; but if there is, after looking at the whole evidence, a reasonable doubt in your minds as to his guilt he is entitled to the benefit of it. The Tribune article, detailing accurately just the transaction; the letter from General Grierson, also detailing accurately just the transaction; the order of McDowell, made on the face of it to correct abuses, were all before the Secretary of War.

He had been told, therefore, of the sufferings of the soldiers. He had been told how much they had to pay on account of this extortion from Evans. The defendant knew nothing of the lowering of freights, but after having knowledge of the other facts, if he did not know them before, he still receives periodically once in three or six months, as the case may be, these sums of money. After the Tribune article and the Grierson letter and the McDowell order, he received ten separate and distinct payments. Gifts, do you call them? gifts that conceal themselves out of sight? gifts that crawl like a serpent? What nonsense. A man who in a *bona fide* way receives a gift of a friend is proud of it; it is evidence of the appreciation of his friend; but in this case these gifts were not only carefully concealed and kept out of sight, but when revealed the blow was like the thunder-bolt of divine justice: the defendant went into the dust before it and a nation looked on with sorrow and amazement.

With a knowledge of all the facts, in the view of all these circumstances, the Secretary of War did not remove Evans, but allowed him to remain; and, Senators, let me call your attention to further circumstances under which he allowed him to remain. He knew that he had given him the sole tradership at the place; that he had given him licenses in regard to liquor; that he had extended his territory; and yet with these three distinct privileges added to the prior tradership, he allowed Evans to remain as post-trader and hold them all. Why, after he had heard and knew of the fact that Evans was paying $12,000 a year to the real post-trader, Marsh, then $6,000 a year, of which the Secretary was receiving half, did he allow him to remain? Is there more than one explanation? Is there any possible explanation excepting that he was influenced, that his official action was influenced, that he allowed him to remain because he was receiving certain periodical sums? And, Senators, I put you this question on your consciences: if Evans had failed or refused to pay the $12,000 or the $6,000, or if this contract had never been made, or if, having been made, the Secretary of War had never received any part of the money, I put it, I say, to your consciences to answer whether Mr. Belknap, the Secretary of War, would have continued Mr. Evans

in his place. Is it not absolutely certain that but for the reception of this money from time to time by the Secretary of War the post-trader Evans *eo nomine* would have been removed?

The learned counsel, Mr. Black, made one observation which is precisely applicable to this case. He said "gifts may be used to cover essential bribery." Precisely what he meant by a gift after his former definition of it, I do not care now to say, but I quote his language: "Gifts may be used to cover essential bribery." Was there ever a case to which it applied more than to this case? Call these things gifts? Let Marsh come on the stand over and over again and swear that they were gifts; that it was a pleasure to him to make such gifts; were they not still gifts "which were used to cover essential bribery?" And while Mr. Marsh, in his weakness and in his difficulty may have come to the stand and sworn to this honestly, yet is it not nevertheless true that not one solitary dollar of this money would have been paid by him to the Secretary of War had it not been under an arrangement, express or implied, with that officer? Is it not true that the pleasure of giving these gifts would have wholly and utterly disappeared but for the fact that Evans was holding this post-tradership as his creature, and paying him this $12,000 and $6,000 a year, half of which he gave to the Secretary of War with the knowledge that if withdrawn Evans would lose his place? No, these gifts come under those comprehensive words spoken by some one not very long ago, "addition, division, and silence." Fraud does not lift up its head; neither did this transaction lift up its head. Senators will remember that these gifts did not come from any generous operation of the human soul. Mr. Marsh had not just seen General Belknap and received some good dinner or some word of kindness. They were not gifts that came now and then after pleasant interviews and after rides on the road or dwelling together at Long Branch; but they were gifts that came *periodically*, just as the sun rises and sets; they were gifts that came month by month or quarter by quarter; gifts that were no gifts.

I call the attention of the Senators for a few moments to the reference which one of the counsel made to the case of Speaker KERR. I regret that the counsel, in his desperation, brought it into this case and that he made in regard to it so baseless an assertion. I am constrained to say here in honor of the House to which I belong that its verdict in favor of the Speaker was unanimous and by a standing vote. The House, with the utmost unanimity, pronounced the prosecution against Speaker KERR an infamous conspiracy, and pronounced his character entirely pure; the House declared that the evidence against him was perjured testimony, for this was the language of the report unanimously adopted, which was brought in by a republican member of the House. In fact, all the motions were made by republicans. Under these circumstances I deem it my duty here to say that the counsel had no right to compare the case of the defendant with that of Mr. KERR. Here is a case where General Belknap confesses that he had the money from year to year, from quarter to quarter. In the other case Mr. KERR upon his oath denied at once that he had ever had a farthing of the money, and the man who testified against him not only contradicted himself, but was absolutely contradicted by several members of the House and other highly respectable witnesses. Therefore the evidence, the circumstances, the character of Mr. KERR, all conspired to prove that he was absolutely innocent of the charge made against him. In the judgment of the House, in the public judgment, and so it will go down in history, MICHAEL C. KERR stands on the high eminence on which he stood before a perjurer poured forth his venom.

We are not here to detract from the evidence of the general good character of the defendant. As the case stands, undoubtedly independent of the transaction before this tribunal, the defendant has shown that he had borne a good character; but the counsel had no right to say what he did in regard to the other House; he had no right to say, under the objections made here and under the arrangements made with counsel and under the rules of evidence, that nothing in all these transactions appeared against General Belknap. We are not here to urge that anything did appear against him; but I only say that the counsel had no right to take the position he did, because we should have had no right to bring in the evidence if it existed; and the leading counsel on the other side well knows that on appearing before the senatorial committee it was announced by the managers that they would not go beyond the articles, nor attempt to go beyond the articles. Therefore a large number of the witnesses of the defendant, numbering in the first place one hundred and ninety-seven, were stricken from the list.

It appears in the evidence before the Senate that Mr. Marsh at one time was approached on the subject of going before the committee and saying that this was Mrs. Belknap's money. The defendant's counsel who last addressed you, (and to this I call the attention of the Senate,) said that he had been positively inhibited by his client from bringing forward the defense or offering evidence that this property was the property of his wife, or that he believed it was the property of his wife. But he said notwithstanding he had been forbidden to bring forward such evidence, he nevertheless would look into the case, and unless his client pulled him down, as he elegantly expressed it, "by the coat-tails," he would go on and show the Senate from the evidence that this property was the property of Mrs. Belknap, at least that General Belknap believed it was the property of Mrs. Belknap.

Senators will observe in regard to the sincerity of this defense that although General Belknap rose from his seat several times and approached the counsel, it was not for the purpose of pulling him down, but it was for the purpose of handing him fragments of evidence which he thought would sustain this strange plea. I tell you, Senators, that this is an attempt at imposition, so it seems to me, that has been seldom attempted in a court of justice. Counsel stands up before you and would have you believe that here is an absolute defense. The counsel says that this property General Belknap thought was the property of his wife, that his hands are entirely clean and he entirely innocent; but he tells you that for some unknown and unaccountable reason his client will not permit him to bring forward the evidence; and yet right in this very tribunal, his client hearing every word he says, the counsel stands up and tries to convince the Senate of the United States sitting as a court of impeachment that such was the fact. Was there ever such hollow nonsense and such miserable hypocrisy? Ay, if General Belknap had told him that he had evidence that it was his wife's property or he had evidence to show that he believed it was his wife's property, and then had absolutely forbidden him to use it—had the counsel attempted to show what was so forbidden, the defendant would have hurled him from the case and said, "Sir, I have forbidden all this." So far from it he actually aids him—as we have seen—in collating the testimony supposed to bear on that point.

But, Senators, we assume that if any such defense existed it would have been brought forward. Have you any doubt that it would have been brought forward? If the defense existed showing the entire innocence of General Belknap, is there any question, I repeat, that it would have been brought forward, and if such a defense existed might it not have been brought forward? Where is Dr. Tomlinson and the other witnesses who claimed to know something about it, for I believe it is disclosed in some of the evidence that Dr. Tomlinson wanted Mr. Marsh to make such a statement before the congressional committee? Where were Mr. Belknap and his wife? Why were they not offered as witnesses? Did the counsel know that we should have objected to them? If we had objected to them as witnesses, did the counsel know that this Senate in a quasi civil prosecution would not have admitted their testimony? I can say for one of the managers that had the testimony been offered I would have hesitated long before attempting to exclude it. When it is now so universal in the States to receive the evidence of the parties and in the United States courts in all civil actions, a serious question would have been presented. In so far as this is a civil action, or if on account of the pleadings or otherwise this could be treated as a quasi civil action, then I repeat, a very serious question would have been presented whether General Belknap and his wife were not both competent witnesses. But it is a significant fact that they did not make the least attempt to introduce them. They did not make the least attempt to introduce any evidence to show that this money belonged to the wife or that General Belknap supposed it belonged to his wife. On this subject they were entirely silent, and from this I infer that no such evidence existed, that it is a mere pretense, a mere assumption, something that must be dropped utterly and entirely from the case.

But, Senators, there is another circumstance to which I wish to call your attention, and that is the resignation of General Belknap. Why did General Belknap resign? Is there more than one answer to this question? Why did he resign? If General Belknap had been grounded in truth and innocence, why did he go down like the oak before the whirlwind? It has been suggested that it was to save the feelings of somebody else; it was to save the reputation of his wife; it was to keep shame from his children. Did not General Belknap know, that strong stalwart man, just as well as any Senator knows, that in law and in fact the man is the head of the household; that if he could have held up his head in that tempest and said, "I am innocent," it would have made no difference in the public judgment to any great extent whether his wife had been dealing in this tradership or not? Did he not know that if he were an innocent man he could still be Secretary of War; that no one would undertake to turn him out for the fault of his wife? Did he not know that as long as he, the head of that household, stood up and could say, "I am innocent," he was the oak to which the children and wife could have clung as tendrils, and clung forever? Did he not know that? Therefore what a mockery it is, what worse than mockery to come here and say that he damned himself to eternal infamy and brought eternal disgrace upon his family by this resignation which the common sense and common judgment of mankind—as he well knew would be the case—took as a confession of guilt, just as much as they would if a horse had been stolen and the man on the horse was riding away as fiercely as he could. No, Senators, this is a far-fetched suggestion which is made on the other side. I have seen General Belknap here in court; I have watched his countenance; I have seen his manly form; I have heard that he has been in the Army as a soldier; and I do not see any Senator before me who would sooner than he, if the truth would warrant it, say, "I am innocent; I will stand up; and if my wife has been at fault in dealing with this post-tradership the world will forgive her;" and this is true. When this evidence was presented to him did he say "I am innocent of this charge?" No; he fled before it and resigned, knowing at that time, knowing at that supreme moment of his life that the whole universe would say he was guilty, and that history would say that he resigned because he was guilty, and he comes into this

august tribunal and would impose on these Senators the idea that he has got evidence that he will not bring forward, and yet he let his counsel talk here by the hour forcing or attempting to force on the minds of Senators the suggestion that the defendant is entirely innocent, that he buried himself out of sight and resigned his high office simply out of regard to his wife or some other feeling for her, when by that very act he knew he was sinking himself and his wife and his children into the deepest infamy of history.

There is another thing to which I desire to call the attention of the Senate, and I shall not trespass on your attention much longer. The defendant puts in what is known as a special plea, all of which I need not read to you. He says he resigned because of a contract with Hon. HIESTER CLYMER. The plea states:

> Hon. HIESTER CLYMER, chairman of said committee, then declared to said Belknap that he, said CLYMER, should move in the said House of Representatives, upon the statement of said Marsh, for the impeachment of him, said Belknap, unless the said Belknap should resign his position as Secretary of War before noon of the next day, to wit, March 2, 1876; and said Belknap, regarding this statement of said CLYMER, chairman as aforesaid, as an intimation that he, said Belknap, could, by thus resigning, avoid the affliction inseparable from a protracted trial in a forum which would attract the greatest degree of public attention, and the humiliation of availing himself of the defense disclosed in said statement itself, which would cast blame upon said other persons, he yielded to the suggestion made by said CLYMER, chairman as aforesaid, believing that the same was made in good faith by the said CLYMER, chairman as aforesaid, and that he, said Belknap, would, by resigning his position as Secretary of War, secure the speedy dismissal of said statement from the public mind, which said statement, though it involved no criminality on his part, was deeply painful to his feelings, and did resign his said position as Secretary of War, as hereinbefore stated.

Senators, in regard to this plea, with no attempt by the defendant to sustain it, in the first place we say that General Belknap sat by and heard this very defense without evidence urged upon your attention, thereby contradicting the plausible pretense that he had forbidden its introduction. Large enough to have carried his counsel out by the ears, he hears this very defense or a part of it urged on the attention of the Senate, although he alleges he had forbidden it. Again, HIESTER CLYMER, a gentleman of the highest character and the highest integrity, has been on the stand, a gentleman the peer of any of us in all that constitutes manhood. Why did not these three learned counsel or one of them happen to think that Mr. CLYMER was on the stand, a man of conscience and a man of honor, and by whom the defendant could have proved the defense that he resigned pursuant to a contract that he should not be impeached, if such contract was made?

Mr. BLAIR. Allow me to interrupt you and I will state why we did not.

Mr. Manager LORD. Well, sir.

Mr. BLAIR. Because we did not think that was material to the defense. It was in special answer to your replication to our plea.

Mr. Manager LORD. Not material to the defense does the counsel say, to show some reason for this strange resignation? I have already considered one pretense which has been paraded here, that he resigned on account of his wife, thereby sacrificing himself, and her too, and all his children. Now if it were true that the counsel [Judge Blair] who was connected with the case before the committee dared not to call on HIESTER CLYMER to testify to such a contract, then it is true that no contract was made that the defendant should not be prosecuted in case he would resign, I aver that would be a motive for resignation although an inadequate motive, yet it would be some motive for resignation. Dare the learned counsel stand here for a moment to say that if he believed he could prove to this tribunal that the defendant was induced to resign because of the contract, he would not have proved it? Would it not have gone so far as to show that the defendant had some motive, although as just said an inadequate motive, to resign? Would he have left the resignation entirely foundationless and without reason except on the theory of guilt?

Mr. BLAIR. Will the gentleman allow me to interrupt him?

Mr. Manager LORD. Yes, sir.

Mr. BLAIR. As the gentleman reads the plea, the matter of the contract is an inference from certain facts which were stated, and there was never any doubt about those facts——

Mr. Manager LORD. I do not want the gentleman to testify. Although he is a distinguished man, if he is going to testify let him testify under oath. I do not allow him to stand here and testify about facts. I simply affirm that if that plea were true, if Mr. CLYMER agreed with Mr. Belknap that he would not impeach him in case he should resign, that being a kind of motive in that direction if it were true, there is not one of these distinguished counsel but would have proved it, and one of them would have occupied the attention of this Senate at least an hour in showing that it was a sufficient reason; and I say I am happy for General Belknap's credit to find that this plea was not sworn to.

Mr. BLAIR rose.

Mr. Manager LORD. I cannot yield any further.

Mr. BLAIR. I wish to ask the gentleman simply whether he will say to the Senate——

Mr. Manager LORD. The counsel may ask a question; I object only to his testifying.

Mr. BLAIR. You asked me a question.

Mr. Manager LORD. No; you were to ask me a question.

Mr. BLAIR. You asked if the Senate would not have had debate here for an hour.

Mr. Manager LORD. I do not care about an argument; I do not yield for that.

Mr. BLAIR. I ask the gentleman whether he would have considered that a valid defense.

Mr. Manager LORD. I will answer the gentleman, *pro tanto* it was a defense on the question of motive. There the defendant stood resigning, going down before this tempest without any possible reason assigned therefor, excepting in the imagination of counsel, excepting assumed facts which, he says, General Belknap told him to withhold; and I say that in the face of this resignation, in the face of the impression which it made upon mankind and will make upon history, if it were true that he resigned because of a contract with Mr. CLYMER, chairman of the Committee on War Expenditures, the counsel should have proved the fact for what it is worth; and I say again, if it were true, he would have proved it.

Now, Senators, allow me for a few moments to call your attention to what the learned counsel, Mr. Black, said in regard to gifts. I am not going over the ground which he went over so eloquently; but I want to say that every gift to which he referred was received in the sunlight. When Daniel Webster received gifts from Massachusetts to sustain him in his senatorial life, it was published in the papers immediately. When General Grant received gifts from his friends it was published the world over immediately. There was nothing in their minds from their standing points to conceal from the light of the sun. But when General Belknap received these remarkable gifts, they were concealed from year to year, from month to month, and when by some unfortunate family difficulty or otherwise the fact was revealed, then he goes down into the darkness and does not attempt to hold up his head in the light; and here is the essential difference between guilt and innocence; the difference between heaven and hell; the difference between light and darkness; the difference between parallel lines which can never meet; between the gifts to which the counsel referred and the gifts which General Belknap received under the principles of "addition, division, and silence."

But I am happy to say that there is a distinguished member of this body who when he found that his friends had raised him a fund to give him a home here in Washington which he needed, for he had been elected to this high place without the means to sustain the position which his friends thought that he deserved—I say when he found that a quarter of a hundred thousand dollars, more or less, had been raised by his friends and would have been revealed in the sunlight at once, he said to them, "No; I cannot consent to take the gift." I am happy to believe that there are many members of this Senate who would not receive a gift under any circumstances while holding a legislative office. I am not judging men of different temperaments; I am not judging men for differences of opinion. I do not doubt the sincerity and good faith of the President of the United States in receiving every present that he ever received; but I do say that there are many Senators before me, many members of this honorable body that could not be induced while holding the position of Senator to receive a gift from anybody of such a character as would violate the injunction of the great apostle to "avoid the appearance of evil."

Senators, the counsel, Mr. Black, was eminently right in the councils of Pennsylvania when in its constitutional convention he introduced a constitutional provision that no man in office should receive a gift; and the fact that the provision did not pass the convention only shows that Pennsylvania is not or was not then quite abreast with the developments of the age.

Senators, I am one of those who believe in progress. I believe that this age is the best age which the sun has ever shone upon; I believe there is more of religion, more of humanity, more of love, more of charity in this age than in any age that has preceded it. Look at the insane asylums, the asylums for idiots, the asylums for the deaf and dumb and for the blind; see all these persons elevated almost to supreme happiness. Many of them but a few years ago were wandering around in the streets and woods objects of terror and dislike, treated almost as though they were brutes. I thank God for these and all other evidences of humanity and civilization, and for all this great progress. I hope there will be no backward step. Go back to the Roman Empire, and the emperor who went forth like a highway robber and seized on other empires was crowned with laurels and rode beneath triumphal arches. The farmer-general who unlawfully laid by his millions and bought his beautiful villas was the next hero. Now that emperor would be confronted by the combined power of the civilized world, and that farmer-general, if not imprisoned, would be fleeing in foreign lands.

Two hundred years or more ago "gifts that might cover essential bribery" were not unusual. Lord Bacon, "the greatest, wisest," I will not say "meanest of mankind," took gifts, having no idea that his judgment was influenced; but an angry king and prime minister quickened his conscience, and he confessed that taking the gifts was bribery.

Under the benign influences of our holy religion, enjoining "the golden rule," do not virtue and intelligence grow with liberty? Give to a man his portion of the sovereign power and it elevates him, give to him the practical exercise of his rights and it educates him.

There is now a higher and healthier sentiment than in any former age. Men are held to official responsibilities now, thank God, that they never were before. The time has been in the recollection of

many of you when a person thought he had the right to use his official position for his own advantage; but that time has gone by, and a good deal of what we see and hear which leads a great many so mournfully to say that the age is going backward and we are receding to barbarism, very much which occasions the apparent increase of wrong, arises from the higher demands of a greater civilization, from the higher plane of an enlightened people. Let not this Senate turn the wheels backward.

The PRESIDENT *pro tempore*. The argument in the case is now concluded.

Mr. EDMUNDS. I move that the court adjourn.

Mr. CONKLING. That brings us here to-morrow at twelve o'clock.

The PRESIDENT *pro tempore*. To-morrow at twelve o'clock.

Mr. CONKLING. I think we had better adjourn.

The motion was agreed to; and (at three o'clock and fifty minutes p. m.) the Senate sitting for the trial adjourned.

FRIDAY, *July* 28, 1876.

Mr. EDMUNDS. I offer the following order at this time, because it relates to the lapse in the impeachment business:

Ordered, Pursuant to Rule 25 for impeachments, that the Senate will resume the consideration of the articles of impeachment against William W. Belknap at twelve o'clock noon, this day.

Mr. INGALLS. As there are quite a number of Senators absent on unavoidable business, I would suggest to the Senator from Vermont that it might be advisable to modify the order so that it will read "at twelve o'clock on Monday next," at which time I understand those Senators will return.

Mr. EDMUNDS. I am quite willing to submit to the pleasure of the Senate.

Mr. INGALLS. I have no preference myself.

Mr. EDMUNDS. My object, of course, is to revive the proceeding; that is all.

Mr. ANTHONY. We might agree to take no vote to-day.

Mr. SHERMAN. I hope there will be no postponement.

Mr. EDMUNDS. If we are to adjourn over to-morrow, as the respect we have shown to such occasions has usually led us to do, on account of the funeral of our late associate, [Mr. CAPERTON,] then I am not sure but that it would be better to say that we will take up the impeachment matter on Monday. May I ask any of the Senators if any of them are acquainted with the fact that his funeral at home is to be to-morrow?

Mr. RANDOLPH. That was the statement made yesterday by some of his friends.

The PRESIDENT *pro tempore*. The Chair was so informed yesterday.

Mr. EDMUNDS. I withdraw the order I offered for a moment, and move that when the Senate adjourn to-day it be to meet on Monday next, for the reason I have stated, that the usual respect that we pay to such occasions is eminently due to this one.

The PRESIDENT *pro tempore*. The Senator from Vermont withdraws the proposed order and moves that when the Senate adjourn to-day it be to meet on Monday next.

The motion was agreed to.

Mr. EDMUNDS. I offer the order again changed to Monday next, the 31st instant, if that be the date.

The PRESIDENT *pro tempore*. The question is on concurring in the order that the Senate will resume the consideration of the articles of impeachment against William W. Belknap at twelve o'clock, noon, Monday, the 31st instant.

The order was agreed to.

Mr. EDMUNDS. I suggest that the House of Representatives and the counsel be notified of this order.

The PRESIDENT *pro tempore*. Due notice will be given.

MONDAY, *July* 31, 1876.

The PRESIDENT *pro tempore* having announced the arrival of the hour fixed, legislative and executive business was suspended and the Senate proceeded to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

The PRESIDENT *pro tempore*. The House of Representatives will be notified as usual.

Messrs. LORD, LYNDE, and HOAR, of the managers on the part of the House of Representatives, appeared and were conducted to the seats assigned them.

Mr. Carpenter, one of the counsel for the respondent, appeared.

The Secretary read the journal of proceedings of the Senate sitting on Wednesday, July 26, for the trial of the impeachment.

Mr. HAMLIN. Mr. President, I now move to postpone further proceedings of the Senate sitting as a court of impeachment for the purpose of taking up legislatively the resolution to which I have already referred, to wit, amending the rules of proceeding so as to allow subsequent proceedings to be held in open session. That is my precise object.

The PRESIDENT *pro tempore*. The Senator from Maine moves to postpone the trial session for the purpose of returning to legislative session, in order to consider the resolution he has stated.

Mr. CONKLING. Let us have the yeas and nays on this question.

The yeas and nays were ordered.

Mr. STEVENSON. What is the precise question?

The PRESIDENT *pro tempore*. The Senator from Maine moves the postponement of the trial session for the purpose of returning to legislative session, in order to consider a resolution amending the rules.

Mr. CONKLING. I suggest the Chair ought to state the object of that. It is merely, as I understand, that the consultation may be held without clearing the galleries.

The PRESIDENT *pro tempore*. The Chair will remind the Senator that debate is not in order.

Mr. ALLISON. I would ask the Chair to state the character of the rule to be changed.

Mr. EDMUNDS. That is for the Senate to find out.

Mr. CONKLING. I feel inclined to insist that the Senate has the right to hear from the Chair the motion on which it is to vote.

The PRESIDENT *pro tempore*. The Secretary will report the proposition of the Senator from Maine.

The CHIEF CLERK. Mr. HAMLIN'S resolution is as follows:

Resolved, That Rules 19 and 23 of procedure and practice in the Senate when sitting for the trial of impeachments be amended to read as follows:

XIX. At all times while the Senate is sitting upon the trial of impeachment the doors of the Senate shall be kept open.

XXIII. All the orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, subject, however, to the operation of Rule 7; and in that case no member shall speak more than once on one question, and for not more than ten minutes on any interlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate; but a motion to adjourn may be decided without the yeas and nays, unless they be demanded by one-fifth of the members present. The fifteen minutes herein allowed shall be for the whole deliberation on the final question, and not to the final question on each article of impeachment.

The PRESIDENT *pro tempore*. The Senator from Maine moves the postponement of the trial session for the purpose of returning to legislative session, in order to consider the proposition just read. On this motion the yeas and nays have been ordered.

The question being taken by yeas and nays, resulted—yeas 23, nays 32; as follows:

YEAS—Messrs. Allison, Anthony, Boutwell, Bruce, Cameron of Wisconsin, Christiancy, Conkling, Cragin, Eaton, Ferry, Frelinghuysen, Hamlin, Howe, Ingalls, Jones of Florida, Jones of Nevada, Logan, McMillan, Norwood, Paddock, Spencer, West, and Windom—23.

NAYS—Messrs. Barnum, Bayard, Booth, Cameron of Pennsylvania, Cockrell, Cooper, Davis, Dawes, Edmunds, Harvey, Hitchcock, Kelly, Kernan, Key, McCreery, McDonald, Merrimon, Mitchell, Morrill, Morton, Oglesby, Robertson, Sargent, Saulsbury, Sherman, Stevenson, Thurman, Wadleigh, Wallace, Whyte, Withers, and Wright—32.

NOT VOTING—Messrs. Alcorn, Bogy, Burnside, Clayton, Conover, Dennis, Dorsey, Goldthwaite, Gordon, Hamilton, Johnston, Maxey, Patterson, Randolph, Ransom, and Sharon—16.

So the motion was not agreed to.

Mr. EDMUNDS. Mr. President, the arguments being through, I move that the doors be closed for deliberation on the articles.

The PRESIDENT *pro tempore*. The Senator from Vermont moves that the doors be closed for deliberation.

Mr. LOGAN called for the yeas and nays, and they were ordered.

Mr. MERRIMON. I desire to state that my colleague [Mr. RANSOM] has been suddenly called away on account of serious sickness in his family.

The question being taken by yeas and nays, resulted—yeas 32, nays 25; as follows:

YEAS—Messrs. Anthony, Bayard, Booth, Cameron of Pennsylvania, Cockrell, Davis, Dawes, Edmunds, Harvey, Hitchcock, Kelly, Kernan, Key, McCreery, McDonald, Maxey, Merrimon, Mitchell, Morrill, Morton, Norwood, Robertson, Sargent, Saulsbury, Sherman, Stevenson, Thurman, Wadleigh, Wallace, Whyte, Withers, and Wright—32.

NAYS—Messrs. Allison, Barnum, Boutwell, Bruce, Cameron of Wisconsin, Christiancy, Conkling, Cooper, Cragin, Dorsey, Eaton, Ferry, Frelinghuysen, Hamlin, Howe, Ingalls, Jones of Florida, Jones of Nevada, Logan, McMillan, Oglesby, Paddock, Spencer, West, and Windom—25.

NOT VOTING—Messrs. Alcorn, Bogy, Burnside, Clayton, Conover, Dennis, Goldthwaite, Gordon, Hamilton, Johnston, Patterson, Randolph, Ransom, and Sharon—14.

So the motion was agreed to.

The galleries having been cleared and the doors closed, the Senate proceeded to deliberate.

Mr. CONKLING submitted the following order for consideration:

Ordered, That when called to vote whether the articles of impeachment or either of them are sustained, any Senator who votes in the negative shall, be at liberty to state, if he chooses, that he rests his vote on the absence of guilt proved in fact, or on the want of jurisdiction, as the case may be; and the vote shall be entered in the journal accordingly.

Mr. EDMUNDS moved to amend by striking out all after the word "ordered" and inserting:

That on Tuesday next the 1st day of August, at twelve o'clock meridian, the Senate shall proceed to vote, without debate, on the several articles of impeachment. The presiding officer shall direct the Secretary to read the several articles successively, and after the reading of each article the presiding officer shall put the question following, viz: "Mr. Senator ——, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high crime or high misdemeanor, as the charge may be, as charged in this article?" Whereupon such Senator shall rise in his place and answer "guilty" or "not guilty" only.

And each Senator shall be permitted to file within two days after the vote shall have been so taken his written opinion, to be printed with the proceedings.

Mr. SHERMAN moved to amend the amendment of Mr. EDMUNDS by striking out the word "only" after "guilty," and in lieu thereof inserting:

And each Senator shall be at liberty to state the ground of his vote in a single sentence, which shall be entered on the journal.

Mr. SARGENT moved to amend the amendment of Mr. SHERMAN by inserting in lieu of the words proposed to be inserted:

Any Senator who votes in the negative shall be at liberty to state if he chooses that he rests his vote on the absence of guilt proved in fact, or on the want of jurisdiction, as the case may be; and any Senator who votes in the affirmative may add that he holds the vote of a majority heretofore in favor of jurisdiction binding on him, and the vote shall be entered on the journal accordingly.

Mr. EDMUNDS moved to amend the order proposed by Mr. CONKLING by striking out all after the word "that," and in lieu thereof inserting:

Each Senator may in giving his vote state his reasons therefor, occupying not more than one minute; which reasons shall be entered in the journal in connection with his vote.

Mr. CONKLING moved to amend the amendment of Mr. EDMUNDS by adding thereto the words:

And immediately following his name and vote.

The amendment of Mr. CONKLING to Mr. EDMUNDS's amendment was agreed to.

On the question to agree to the order of Mr. EDMUNDS as amended, it was determined in the affirmative.

Mr. EDMUNDS then withdrew the amendment first offered by him to the order proposed by Mr. CONKLING.

The question then being on the order of Mr. CONKLING as amended, as follows:

Ordered, That each Senator may, in giving his vote, give his reasons therefor, occupying not more than one minute; which reasons shall be entered in the journal in connection with his vote and immediately following his name and vote,

It was determined in the affirmative.

Mr. EDMUNDS submitted the following order for consideration:

Ordered, That on Tuesday next, the 1st day of August, at twelve o'clock meridian, the Senate shall proceed to vote without debate on the several articles of impeachment. The presiding officer shall direct the Secretary to read the several articles successively, and after the reading of each article the presiding officer shall put the question following, namely: "Mr. Senator ——, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high crime," or "high misdemeanor," as the charge may be, "as charged in this article?" Whereupon such Senator shall rise in his place and answer "guilty" or "not guilty," with his reasons, if any, as provided in the order already adopted; and each Senator shall be permitted to file within two days after the vote shall have been so taken his written opinion to be printed with the proceedings.

Mr. HOWE raised the question of order that the order of Mr. EDMUNDS could not now be considered, inasmuch as it proposed to change the twenty-second rule of procedure and practice for impeachments, and was therefore required under the rules of the Senate to be submitted one day for consideration.

The PRESIDENT *pro tempore* overruled the point of order made by Mr. HOWE and decided that the order of Mr. EDMUNDS was in order.

The question recurring on the order of Mr. EDMUNDS,

Mr. INGALLS moved to amend the order by striking out all after the word "impeachment" in line 4, and in lieu thereof inserting:

And that in taking the final question the presiding officer shall call each Senator by name in alphabetical order and upon each article propose as follows:

Mr. Senator ——, how say you, is the impeachment under this article sustained?

Whereupon each Senator shall rise in his place and answer "yea" or "nay," and may, as provided in the order already adopted, state the ground of his vote.

The question being taken on this amendment by yeas and nays, resulted—yeas 24, nays 27; as follows:

YEAS—Messrs. Allison, Anthony, Booth, Boutwell, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Conkling, Conover, Cragin, Eaton, Ferry, Frelinghuysen, Hamlin, Harvey, Howe, Ingalls, Jones of Florida, Logan, McMillan, Oglesby, Spencer, West, and Windom—24.

NAYS—Messrs. Barnum, Bayard, Cockrell, Cooper, Davis, Dawes, Edmunds, Gordon, Kelly, Kernan, Key, McCreery, McDonald, Maxey, Merrimon, Morrill, Morton, Norwood, Robertson, Saulsbury, Stevenson, Thurman, Wadleigh, Wallace, Whyte, Withers, and Wright—27.

NOT VOTING—Messrs. Alcorn, Bogy, Bruce, Burnside, Clayton, Dennis, Dorsey, Goldthwaite, Hamilton, Hitchcock, Johnston, Jones of Nevada, Mitchell, Paddock, Patterson, Randolph, Ransom, Sargent, Sharon, and Sherman—20.

So the amendment of Mr. INGALLS was rejected.

The question recurring on the order of Mr. EDMUNDS,

Mr. ALLISON demanded a division of the question; and the question being put on the first branch of the order, namely:

Ordered, That on Tuesday next, the 1st day of August, at twelve o'clock meridian, the Senate shall proceed to vote, without debate, on the several articles of impeachment,

It was agreed to.

The question being on the second clause of the order of Mr. EDMUNDS,

Mr. INGALLS moved to amend the clause by inserting in lieu thereof the following:

And that in taking the final question the presiding officer of the Senate shall call each Senator by name in alphabetical order, and upon each article propose as follows, that is to say: "Mr. ——, how say you, is the impeachment under this article sustained?"

Whereupon each Senator shall rise in his place and answer "yea" or "nay," and may also, as provided in the order already adopted, state the grounds of his vote; and each Senator may, within two days thereafter, file his opinion in writing, to be published in the printed proceedings of the case.

Mr. EDMUNDS demanded a division of Mr. INGALLS's amendment; and

The question being put on the first branch thereof,

On the question to agree thereto,

Mr. EDMUNDS raised the question of order that the Senate had previously voted on and rejected the same proposition.

The PRESIDENT *pro tempore* overruled the point of order made by Mr. EDMUNDS, and decided that the first branch of the amendment of Mr. INGALLS was in order.

From this decision Mr. EDMUNDS appealed; and on the question, Shall the decision of the Chair stand as the judgment of the Senate?

Mr. HOWE called for the yeas and nays; which being taken, resulted—yeas 31, nays 18; as follows:

YEAS—Messrs. Allison, Anthony, Booth, Boutwell, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Conkling, Cragin, Davis, Eaton, Frelinghuysen, Gordon, Hamlin, Harvey, Howe, Ingalls, Jones of Florida, Jones of Nevada, Logan, McMillan, Merrimon, Morton, Oglesby, Paddock, Patterson, Spencer, Stevenson, Wadleigh, Windom, and Wright—31.

NAYS—Messrs. Bayard, Cockrell, Cooper, Dawes, Edmunds, Kelly, Kernan, Key, McCreery, McDonald, Maxey, Morrill, Norwood, Saulsbury, Thurman, Wallace, Whyte, and Withers—18.

NOT VOTING—Messrs. Alcorn, Barnum, Bogy, Bruce, Burnside, Clayton, Conover, Dennis, Dorsey, Ferry, Goldthwaite, Hamilton, Hitchcock, Johnston, Mitchell, Randolph, Ransom, Robertson, Sargent, Sharon, Sherman, and West—22.

So the decision of the Chair was sustained.

The question recurring on the first branch of the amendment of Mr. INGALLS, viz., strike out all of the order of Mr. EDMUNDS after the word "impeachment" in line 4 and insert:

And that in taking the final question the Presiding Officer of the Senate shall call each Senator by name in alphabetical order and upon each article propose as follows; that is to say: "Mr. ——, how say you? Is the impeachment under this article sustained?"

On the question to agree thereto,

Mr. INGALLS called for the yeas and nays; which being taken, resulted—yeas 24, nays 26; as follows:

YEAS—Messrs. Allison, Anthony, Booth, Boutwell, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Conkling, Cragin, Ferry, Frelinghuysen, Hamlin, Harvey, Howe, Ingalls, Jones of Nevada, Logan, McMillan, Oglesby, Paddock, Patterson, Spencer, and Windom—24.

NAYS—Messrs. Barnum, Bayard, Cockrell, Cooper, Davis, Dawes, Edmunds, Gordon, Kelly, Kernan, Key, McCreery, McDonald, Maxey, Merrimon, Morrill, Morton, Norwood, Saulsbury, Stevenson, Thurman, Wadleigh, Wallace, Whyte, Withers, and Wright—26.

NOT VOTING—Messrs. Alcorn, Bogy, Burnside, Clayton, Conover, Dennis, Dorsey, Eaton, Goldthwaite, Hamilton, Hitchcock, Johnston, Jones of Florida, Mitchell, Randolph, Ransom, Robertson, Sargent, Sharon, Sherman, and West—21.

So the first branch of Mr. INGALLS's amendment was rejected.

The question being put in the second branch of the amendment of Mr. INGALLS, namely, strike out all of the order of Mr. EDMUNDS after "impeachment" in line 4, and in lieu thereof insert—

Whereupon each Senator shall rise in his place and answer "yea" or "nay," and may also, as provided in the order already adopted, state the grounds of his vote; and each Senator may, within two days thereafter, file his opinion in writing, to be published in the printed proceedings of the case,

It was agreed to.

Mr. EDMUNDS moved to reconsider the vote whereby the second branch of the amendment of Mr. INGALLS to the amendment of Mr. EDMUNDS was agreed to; and the motion to reconsider was agreed to.

The question recurring on the second branch of Mr. INGALL'S amendment, it was rejected.

The question recurring on the order of Mr. EDMUNDS, it was agreed to; as follows:

Ordered, That on Tuesday next, the 1st day of August, at twelve o'clock meridian, the Senate shall proceed to vote, without debate, on the several articles of impeachment. The Presiding Officer shall direct the Secretary to read the several articles successively, and after the reading of each article the presiding officer shall put the question following, namely: "Mr. Senator——, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high crime" or "high misdemeanor," as the charge may be, "as charged in this article?" Whereupon such Senator shall rise in his place and answer "guilty" or "not guilty" with his reasons, if any, as provided in the order already adopted.

And each Senator shall be permitted to file within two days after the vote shall have been so taken his written opinion, to be printed with the proceedings.

On motion by Mr. EDMUNDS, (at six o'clock and twenty minutes p. m.,) the Senate sitting for the trial of the impeachment adjourned.

TUESDAY, *August* 1, 1876.

The PRESIDENT *pro tempore*. The hour of twelve o'clock having arrived, legislative and executive business will be suspended, and the Senate will proceed to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The usual proclamation was made by the Sergeant-at-Arms.

The PRESIDENT *pro tempore*. The Secretary will notify the House of Representatives that the Senate is ready to receive them, and that provision is made for their accommodation.

The Secretary read the journal of the proceedings of the Senate sitting yesterday for the trial of the impeachment.

Mr. LORD, Mr. LYNDE, Mr. MCMAHON, Mr. JENKS, Mr. LAPHAM, and Mr. HOAR of the managers on the part of the House of Representatives appeared.

Mr. Carpenter, of counsel for the respondent, appeared.

The PRESIDENT *pro tempore*. Pursuant to order, the Senate will now proceed to vote without debate on the several articles of impeachment. The Secretary will read the several articles of impeach-

ment successively and the final vote will be taken upon each article separately The Secretary will now read the first article.

The Secretary read as follows:

ARTICLE I.

That William W. Belknap, while he was in office as Secretary of War of the United States of America, namely, on the 8th day of October, 1870, had the power and authority under the laws of the United States, as Secretary of War as aforesaid, to appoint a person to maintain a trading establishment at Fort Sill, a military post of the United States; that said Belknap, as Secretary of War as aforesaid, on the day and year aforesaid, promised to appoint one Caleb P. Marsh to maintain said trading establishment at said military post; that thereafter, namely, on the day and year aforesaid, the said Caleb P. Marsh and one John S. Evans entered into an agreement in writing substantially as follows, namely:

"Articles of agreement made and entered into this 8th day of October, in the year of our Lord 1870, by and between John S. Evans, of Fort Sill, Indian Territory, United States of America, of the first part, and Caleb P. Marsh, of No. 51 West Thirty-fifth street, of the city, county, and State of New York, of the second part, witnesseth, namely:

"Whereas the said Caleb P. Marsh has received from General William W. Belknap, Secretary of War of the United States, the appointment of post-trader at Fort Sill aforesaid; and whereas the name of John S. Evans is to be filled into the commission of appointment of said post-trader at Fort Sill aforesaid, by permission and at the instance and request of said Caleb P. Marsh, and for the purpose of carrying out the terms of this agreement; and whereas said John S. Evans is to hold said position of post-trader as aforesaid solely as the appointee of said Caleb P. Marsh, and for the purposes hereinafter stated:

"Now, therefore, said John S. Evans, in consideration of said appointment and the sum of $1 to him in hand paid by said Caleb P. Marsh, the receipt of which is hereby acknowledged, hereby covenants and agrees to pay to said Caleb P. Marsh the sum of $12,000 annually, payable quarterly in advance, in the city of New York aforesaid; said sum to be so payable during the first year of this agreement absolutely and under all circumstances, anything hereinafter contained to the contrary notwithstanding; and thereafter said sum shall be so payable, unless increased or reduced in amount, in accordance with the subsequent provisions of this agreement.

"In consideration of the premises, it is mutually agreed between the parties aforesaid as follows, namely:

"First. This agreement is made on the basis of seven cavalry companies of the United States Army, which are now stationed at Fort Sill aforesaid.

"Second. If at the end of the first year of this agreement the forces of the United States Army stationed at Fort Sill aforesaid shall be increased or diminished not to exceed one hundred (100) men, then this agreement shall remain in full force and unchanged for the next year. If, however, the said forces shall be increased or diminished beyond the number of one hundred (100) men, then the amount to be paid under this agreement by said John S. Evans to said Caleb P. Marsh shall be increased or reduced in accordance therewith and in proper proportion thereto. The above rule laid down for the continuation of this agreement at the close of the first year thereof shall be applied at the close of each succeeding year so long as this agreement shall remain in force and effect.

"Third. This agreement shall remain in force and effect so long as said Caleb P. Marsh shall hold or control, directly or indirectly, the appointment and position of post-trader at Fort Sill aforesaid.

"Fourth. This agreement shall take effect from the date and day the Secretary of War aforesaid shall sign the commission of post-trader at Fort Sill aforesaid, said commission to be issued to said John S. Evans at the instance and request of said Caleb P. Marsh, and solely for the purpose of carrying out the provisions of this agreement.

"Fifth. Exception is hereby made in regard to the first quarterly payment under this agreement, it being agreed and understood that the same may be paid at any time within the next thirty days after the said Secretary of War shall sign the aforesaid commission of post-trader at Fort Sill.

"Sixth. Said Caleb P. Marsh is at all times, at the request of said John S. Evans, to use any proper influence he may have with said Secretary of War for the protection of said John S. Evans while in the discharge of his legitimate duties in the conduct of the business as post-trader at Fort Sill aforesaid.

"Seventh. Said John S. Evans is to conduct the said business of post-trader at Fort Sill aforesaid solely on his own responsibility, and in his own name; it being expressly agreed and understood that said Caleb P. Marsh shall assume no liability in the premises whatever.

"Eighth. And it is expressly understood and agreed that the stipulations and covenants aforesaid are to apply to and bind the heirs, executors, and administrators of the respective parties.

"In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

"JOHN S. EVANS. [SEAL.]
"C. P. MARSH. [SEAL.]

"Signed, sealed, and delivered in presence of—
"E. T. BARTLETT."

That thereafter, to wit, on the 10th day of October, 1870, said Belknap, as Secretary of War aforesaid, did, at the instance and request of said Marsh, at the city of Washington, in the District of Columbia, appoint said John S. Evans to maintain said trading establishment at Fort Sill, the military post aforesaid, and in consideration of said appointment of said Evans so made by him as Secretary of War as aforesaid, the said Belknap did, on or about the 2d day of November, 1870, unlawfully and corruptly receive from said Caleb P. Marsh the sum of $1,500, and that at divers times thereafter, to wit, on or about the 17th day of January, 1871, and at or about the end of each three months during the term of one whole year, the said William W. Belknap, while still in office as Secretary of War as aforesaid, did unlawfully receive from said Caleb P. Marsh like sums of $1,500 in consideration of the appointment of the said John S. Evans by him, the said Belknap, as Secretary of War as aforesaid, and in consideration of his permitting said Evans to continue to maintain the said trading establishment at said military post during that time. Whereby the said William W. Belknap, who was then Secretary of War as aforesaid, was guilty of high crimes and misdemeanors in office.

The PRESIDENT *pro tempore*. In taking the vote on each article the Secretary will call the Senators in alphabetical order, and each Senator when called will rise in his place and to the final question put by the Presiding Officer will answer "guilty" or "not guilty" with his reasons, if any, as provided. The Secretary will call the first name on the roll.

The Secretary called Mr. ALCORN.

No response.

The SECRETARY. Mr. ALLISON.

Mr. ALLISON rose.

The PRESIDENT *pro tempore*. Mr. Senator ALLISON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. ALLISON. Believing that the respondent was not impeachable when the impeachment was voted by the House of Representatives, he being then a private citizen and not a civil officer of the United States, I answer "not guilty" for want of jurisdiction.

The SECRETARY. Mr. ANTHONY.

Mr. ANTHONY rose.

The PRESIDENT *pro tempore*. Mr. Senator ANTHONY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. ANTHONY. Believing that the respondent was not a civil officer of the United States and not liable to impeachment at the time when the impeachment was voted by the House of Representatives, I say "not guilty."

The Secretary called the name of Mr. BARNUM.

No response.

The SECRETARY. Mr. BAYARD.

Mr. BAYARD rose.

The PRESIDENT *pro tempore*. Mr. Senator BAYARD, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. BAYARD. Guilty.

The Secretary called the name of Mr. BOGY.

No response.

The SECRETARY. Mr. BOOTH.

Mr. BOOTH rose.

The PRESIDENT *pro tempore*. Mr. Senator BOOTH, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. BOOTH. Guilty. Mr. President, if the question of jurisdiction were proposed, I should vote against it, my opinion upon that subject being unchanged; but I am clearly of opinion that it is competent for the Senate sitting as a court of impeachment to decide that question by a majority vote, and that such decision having been made, it is the law of this case until reversed. [Manifestations of applause in the galleries.]

The PRESIDENT *pro tempore*. The Chair will take occasion to remind those occupying the galleries that no applause in the Senate Chamber is allowed.

Mr. SARGENT. I give notice that in case there is the indecorum of the faintest applause in the galleries, I shall ask that the galleries be cleared.

The SECRETARY. Mr. BOUTWELL.

Mr. BOUTWELL rose.

The PRESIDENT *pro tempore*. Mr. Senator BOUTWELL, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. BOUTWELL. Entertaining the opinion that the Senate has no constitutional authority to judge or to try William W. Belknap upon the articles of impeachment as presented by the House of Representatives, I answer "not guilty" as the only way open to me under the order of the Senate for the exercise of my constitutional right to say that I do not concur in these proceedings, whether the proceedings relate to the trial, to the judgment rendered, or to sentence pronounced in this case.

The SECRETARY. Mr. BRUCE.

Mr. BRUCE rose.

The PRESIDENT *pro tempore*. Mr. Senator BRUCE, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. BRUCE. For want of jurisdiction to try the question of guilt, I answer not guilty.

The SECRETARY. Mr. BURNSIDE.

No response.

The SECRETARY. Mr. CAMERON, of Pennsylvania.

Mr. CAMERON of Pennsylvania, rose.

The PRESIDENT *pro tempore*. Mr. Senator CAMERON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. CAMERON, of Pennsylvania. Guilty.

The SECRETARY. Mr. CAMERON, of Wisconsin.

Mr. CAMERON, of Wisconsin, rose.

The PRESIDENT *pro tempore*. Mr. Senator CAMERON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. CAMERON, of Wisconsin. Not guilty. I base my vote on the want of jurisdiction in the Senate to try the respondent, he not being a civil officer of the United States at the time he was impeached by the House of Representatives.

The SECRETARY. Mr. CHRISTIANCY.

Mr. CHRISTIANCY rose.

The PRESIDENT *pro tempore*. Mr. Senator CHRISTIANCY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. CHRISTIANCY. Believing that the respondent was not impeachable when the impeachment was voted by the House, he being then a private citizen and not a civil officer of the United States, I answer, not guilty.

The SECRETARY. Mr. CLAYTON.

No response.

The SECRETARY. Mr. COCKRELL.
Mr. COCKRELL rose.
The PRESIDENT *pro tempore*. Mr. Senator COCKRELL, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. COCKRELL. Guilty.
The SECRETARY. Mr. CONKLING.
Mr. CONKLING rose.
The PRESIDENT *pro tempore*. Mr. Senator CONKLING, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. CONKLING. Forced by the order of a bare majority of the Senators voting, and less than a majority of the Senate, putting the question in this form, to declare by the words guilty or not guilty whether a conviction can lawfully take place on this impeachment, I do not vote on the facts or on the question of guilt or innocence in fact; but I vote "not guilty" on the ground that in this country by the Constitution private citizens are not impeachable; civil officers, and they alone, are the subject of impeachment; and Belknap is not, and when impeached by the House of Representatives was not, a civil officer, but a private citizen, and like other private citizens accused of crime triable before the judicial tribunals of the country where he has been indicted and now awaits his trial.
The SECRETARY. Mr. CONOVER.
Mr. CONOVER rose.
The PRESIDENT *pro tempore*. Mr. Senator CONOVER, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. CONOVER. Not guilty.
The SECRETARY. Mr. COOPER.
Mr. COOPER rose.
The PRESIDENT *pro tempore*. Mr. Senator COOPER, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. COOPER. Guilty.
The SECRETARY. Mr. CRAGIN.
Mr. CRAGIN rose.
The PRESIDENT *pro tempore*. Mr. Senator CRAGIN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. CRAGIN. Not guilty; because I believe the respondent was not impeachable when the House of Representatives instituted proceedings against him, he being then a private citizen, and not a civil officer of the United States. I vote "not guilty" because it is the only way under the order compelling me to vote guilty or not guilty that I can express my opinion that the Senate has no jurisdiction to try or convict in this case.
The SECRETARY. Mr. DAVIS.
Mr. DAVIS rose.
The PRESIDENT *pro tempore*. Mr. Senator DAVIS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. DAVIS. Guilty.
The SECRETARY. Mr. DAWES.
Mr. DAWES rose.
The PRESIDENT *pro tempore*. Mr. Senator DAWES, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. DAWES. Guilty.
The SECRETARY. Mr. DENNIS.
Mr. DENNIS rose.
The PRESIDENT *pro tempore*. Mr. Senator DENNIS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. DENNIS. Guilty.
The SECRETARY. Mr. DORSEY.
Mr. DORSEY rose.
The PRESIDENT *pro tempore*. Mr. Senator DORSEY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. DORSEY. Not guilty. I cast this vote without reference to the evidence or the facts in this case, but solely on the ground that under the Constitution of this country private citizens are not impeachable.
The SECRETARY. Mr. EATON.
Mr. EATON rose.
The PRESIDENT *pro tempore*. Mr. Senator EATON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. EATON. By the compulsory action of a majority of the Senate I am forced to vote, and being firmly of the opinion that I have not the constitutional power to pronounce a conviction upon the accused, because under and by the Constitution of the United States no other persons than those holding civil offices under the United States can be subject to impeachment, therefore, that the Constitution of the United States may not be violated in one of its most important provisions, and without any consideration whatever of the facts in the case, but placing my action upon the sole ground that William W. Belknap was impeached by the House of Representatives when he was a private citizen of the United States, and in no constitutional sense liable to impeachment, I say "not guilty."
The SECRETARY. Mr. EDMUNDS.
Mr. EDMUNDS rose.
The PRESIDENT *pro tempore*. Mr. Senator EDMUNDS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. EDMUNDS. Guilty.
The SECRETARY. Mr. FERRY.
Mr. FERRY rose.
The PRESIDENT *pro tempore*. Mr. Senator FERRY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. FERRY. Not guilty, believing that the respondent was not impeachable when the impeachment was voted by the House, he being then a private citizen, and not a civil officer of the United States.
The SECRETARY. Mr. FRELINGHUYSEN.
Mr. FRELINGHUYSEN rose.
The PRESIDENT *pro tempore*. Mr. Senator FRELINGHUYSEN how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. FRELINGHUYSEN. The Senate being judges of both the law and the fact cannot hold the respondent guilty without deciding that the House when it acted had the right to impeach the respondent. As the respondent was when impeached neither President nor Vice-President nor a civil officer of the United States, but a mere private citizen, I am of opinion that the House had not the right under the Constitution to impeach the respondent; and therefore, for want of jurisdiction, my vote is "not guilty."
The SECRETARY. Mr. GOLDTHWAITE.
No response.
The SECRETARY. Mr. GORDON.
Mr. GORDON rose.
The PRESIDENT *pro tempore*. Mr. Senator GORDON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. GORDON. Guilty.
The SECRETARY. Mr. HAMILTON.
Mr. HAMILTON rose.
The PRESIDENT *pro tempore*. Mr. Senator HAMILTON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. HAMILTON. Guilty.
The SECRETARY. Mr. HAMLIN.
Mr. HAMLIN rose.
The PRESIDENT *pro tempore*. Mr. Senator HAMLIN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. HAMLIN. Not guilty. Believing that the respondent was not impeachable when the impeachment was voted by the House of Representatives, he being then a private citizen and not a civil officer of the United States, I have answered "not guilty," as by the order under which I have been compelled to vote, that was the only manner in which I could express my judgment that the Senate has no jurisdiction of the case and that the whole proceedings are void.
The SECRETARY. Mr. HARVEY.
Mr. HARVEY rose.
The PRESIDENT *pro tempore*. Mr. Senator HARVEY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. HARVEY. Believing that the question of jurisdiction in this case was heretofore determined by the court and that the evidence sustains the article, I vote "guilty."
The SECRETARY. Mr. HITCHCOCK.
Mr. HITCHCOCK rose.
The PRESIDENT *pro tempore*. Mr. Senator HITCHCOCK, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. HITCHCOCK. Guilty.
The SECRETARY. Mr. HOWE.
Mr. HOWE rose.
The PRESIDENT *pro tempore*. Mr. Senator HOWE, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. HOWE. Not guilty, because my judgment must control my vote, because in my judgment the Constitution of the United States does not permit the impeachment of a private citizen and because by the change of a standing rule of the Senate, ordered yesterday, I am compelled to say "not guilty" to avoid voting for impeachment.
The SECRETARY. Mr. INGALLS.
Mr. INGALLS rose.
The PRESIDENT *pro tempore*. Mr. Senator INGALLS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. INGALLS. Being prevented by an order of the Senate from saying whether I concur in the conviction of the respondent, as the Constitution provides; or whether the impeachment is sustained, as the rules direct; but believing that impeachment does not lie against a private citizen, and that therefore the Senate has no jurisdiction in

the cause, without expressing any opinion whatever upon the evidence, I answer, as a conclusion of law only, "not guilty."

The SECRETARY. Mr. JOHNSTON.

No response.

Mr. WITHERS. I wish to state at the request of my colleague [Mr. JOHNSTON] that he is detained from his seat in the Senate by sickness.

The SECRETARY. Mr. JONES, of Florida.

Mr. JONES, of Florida, rose.

The PRESIDENT *pro tempore*. Mr. Senator JONES, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. JONES, of Florida. Entertaining the conviction, Mr. President, that the Senate has no jurisdiction in this case because the respondent at the time of his impeachment was not a civil officer of the United States but a citizen of the State of Iowa, and being unable to assent to the doctrine that a majority of this body has the right to bind the consciences of the minority touching the power of the Senate in cases of impeachment, I respectfully decline to vote unless compelled to do so by the Senate.

The PRESIDENT *pro tempore*, (to the Secretary.) Call the next.

The SECRETARY. Mr. JONES, of Nevada.

Mr. JONES, of Nevada, rose.

The PRESIDENT *pro tempore*. Mr. Senator JONES, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. JONES, of Nevada. Not guilty. In voting thus I do not vote on the facts or on the question of guilt or innocence in fact, but I vote not guilty on the ground that in this country private citizens are not impeachable; civil officers, and they alone, are the subjects of impeachment. William W. Belknap was not when impeached by the House of Representatives and is not now a civil officer of the United States, but a private citizen, and like other citizen accused of crime, triable before the judicial tribunals of the country where he has been indicted and now awaits his trial.

The SECRETARY. Mr. KELLY.

Mr. KELLY rose.

The PRESIDENT *pro tempore*. Mr. Senator KELLY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. KELLY. Guilty.

The SECRETARY. Mr. KERNAN.

Mr. KERNAN rose.

The PRESIDENT *pro tempore*. Mr. Senator KERNAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. KERNAN. Guilty.

The SECRETARY. Mr. KEY.

Mr. KEY rose.

The PRESIDENT *pro tempore*. Mr. Senator KEY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. KEY. Guilty.

The SECRETARY. Mr. LOGAN.

Mr. LOGAN rose.

The PRESIDENT *pro tempore*. Mr. Senator LOGAN, what say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. LOGAN. Mr. President, section 4 of article 2 of the Constitution provides that "the President, Vice-President and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." Inasmuch as William W. Belknap was not a "civil officer of the United States" at the time he was impeached by the House of Representatives, the Senate sitting as a court of impeachment has no legal authority to try him for the offenses charged. The Constitution in my judgment contemplates the impeachment of persons in office as a mode of removal from office of persons who commit impeachable offenses and are not dismissed or put out of office by some other mode. I believe that disqualification can only be added to the judgment of removal of the officer from office. The judgment of the Senate under the Constitution in cases of impeachment must be removal from office, and inasmuch as a person not holding an office cannot be removed from office, therefore for want of any constitutional authority the Senate of the United States cannot try a citizen of the United States on articles of impeachment for high crimes and misdemeanors he not holding a civil office at the time of the impeachment. Believing that I am not required to pronounce on the facts as a judge without jurisdiction to try the case, I vote "not guilty."

The SECRETARY. Mr. MCCREERY.

Mr. MCCREERY rose.

The PRESIDENT *pro tempore*. Mr. Senator MCCREERY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. MCCREERY. Guilty.

The SECRETARY. Mr. MCDONALD.

Mr. MCDONALD rose.

The PRESIDENT *pro tempore*. Mr. Senator MCDONALD, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. MCDONALD. Guilty.

The SECRETARY. Mr. MCMILLAN.

Mr. MCMILLAN rose.

The PRESIDENT *pro tempore*. Mr. Senator MCMILLAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. MCMILLAN. Not guilty, for want of jurisdiction.

The SECRETARY. Mr. MAXEY.

No response.

The SECRETARY. Mr. MERRIMON.

Mr. MERRIMON rose.

The PRESIDENT *pro tempore*. Mr. Senator MERRIMON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. MERRIMON. Guilty.

The SECRETARY. Mr. MITCHELL.

Mr. MITCHELL rose.

The PRESIDENT *pro tempore*. Mr. Senator MITCHELL, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. MITCHELL. Guilty.

The SECRETARY. Mr. MORRILL.

Mr. MORRILL rose.

The PRESIDENT *pro tempore*. Mr. Senator MORRILL, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. MORRILL. Guilty.

The SECRETARY. Mr. MORTON.

No response.

Mr. SHERMAN. I regret to say that the Senator from Indiana [Mr. MORTON] fell in his committee-room not long since and is now suffering severe pain, or he would be present to vote. He has requested me to make this announcement to the Senate, hoping that he will be present before the close of the vote.

The PRESIDENT *pro tempore*, (to the Secretary.) Call the next.

The SECRETARY. Mr. NORWOOD.

Mr. NORWOOD rose.

The PRESIDENT *pro tempore*. Mr. Senator NORWOOD, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. NORWOOD. Guilty.

The SECRETARY. Mr. OGLESBY.

Mr. OGLESBY rose.

The PRESIDENT *pro tempore*. Mr. Senator OGLESBY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. OGLESBY. The question of jurisdiction in this case raised by the pleadings having been settled by the Senate, though adversely to my understanding of the Constitution, nothing is left but to pass upon the proofs under each article. As I do not entertain a reasonable doubt of guilt under this article, my vote is "guilty."

The SECRETARY. Mr. PADDOCK.

Mr. PADDOCK rose.

The PRESIDENT *pro tempore*. Mr. Senator PADDOCK, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. PADDOCK. Having once voted against jurisdiction in this case I cannot now vote for the conviction of the respondent, who, in my opinion, is not amenable to this court. Absence of authority to hold the accused when impeached, he being then as now a private citizen and in no sense a civil officer of the United States, continues throughout until final judgment, and I vote now as then, for want of jurisdiction, "not guilty."

The SECRETARY. Mr. PATTERSON.

Mr. PATTERSON rose.

The PRESIDENT *pro tempore*. Mr. Senator PATTERSON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. PATTERSON. On the jurisdictional inquiry I have no great difficulty. But because, as I understand it, a conviction is asked under this article for *bribery* as defined by the *statute*, as by that statute the accused must have received, asked, or accepted the money or other thing with *intent to have his decision or action on some question, matter, cause, or proceeding influenced thereby*, and as the testimony so far from satisfying me of this cardinal fact, *this intent*, this *influence*, the very pivot or hinge upon which the whole offense of bribery turns, *beyond a reasonable doubt*, is quite wanting in everything like directness and force or any approach to conclusiveness, (and I am not called upon to go beyond this,) I feel bound to vote "*not guilty*."

The SECRETARY. Mr. RANDOLPH.

Mr. RANDOLPH rose.

The PRESIDENT *pro tempore*. Mr. Senator RANDOLPH, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. RANDOLPH. Guilty.

The SECRETARY. Mr. RANSOM.

Mr. RANSOM rose.

The PRESIDENT *pro tempore*. Mr. Senator RANSOM, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. RANSOM. Guilty.
The SECRETARY. Mr. ROBERTSON.
Mr. ROBERTSON rose.
The PRESIDENT *pro tempore*. Mr. Senator ROBERTSON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. ROBERTSON. Guilty.
The SECRETARY. Mr. SARGENT.
Mr. SARGENT rose.
The PRESIDENT *pro tempore*. Mr. Senator SARGENT, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeaners as charged in this article?
Mr. SARGENT. Guilty.
The SECRETARY. Mr. SAULSBURY.
Mr. SAULSBURY rose.
The PRESIDENT *pro tempore*. Mr. Senator SAULSBURY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. SAULSBURY. Guilty.
The SECRETARY. Mr. SHARON.
No response.
The SECRETARY. Mr. SHERMAN.
Mr. SHERMAN rose.
The PRESIDENT *pro tempore*. Mr. Senator SHERMAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. SHERMAN. Guilty.
The SECRETARY. Mr. SPENCER.
Mr. SPENCER rose.
The PRESIDENT *pro tempore*. Mr. Senator SPENCER, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. SPENCER. Believing that the Senate has no jurisdiction and that the entire proceedings are void, I vote "not guilty" on that ground.
The SECRETARY. Mr. STEVENSON.
Mr. STEVENSON rose.
The PRESIDENT *pro tempore*. Mr. Senator STEVENSON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. STEVENSON. Guilty.
The SECRETARY. Mr. THURMAN.
Mr. THURMAN rose.
The PRESIDENT *pro tempore*. Mr. Senator THURMAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. THURMAN. Guilty.
The SECRETARY. Mr. WADLEIGH.
Mr. WADLEIGH rose.
The PRESIDENT *pro tempore*. Mr. Senator WADLEIGH, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. WADLEIGH. Guilty.
The SECRETARY. Mr. WALLACE.
Mr. WALLACE rose.
The PRESIDENT *pro tempore*. Mr. Senator WALLACE, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. WALLACE. Guilty.
The SECRETARY. Mr. WEST.
Mr. WEST rose.
The PRESIDENT *pro tempore*. Mr. Senator WEST, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. WEST. Believing that the Senate has jurisdiction of the trial of impeachments only in the case of a civil officer, and not of a private citizen, I vote "not guilty" on that ground.
The SECRETARY. Mr. WHYTE.
Mr. WHYTE rose.
The PRESIDENT *pro tempore*. Mr. Senator WHYTE, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. WHYTE. Guilty.
The SECRETARY. Mr. WINDOM.
Mr. WINDOM rose.
The PRESIDENT *pro tempore*. Mr. Senator WINDOM, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. WINDOM. For lack of jurisdiction, and without expressing any opinion upon the evidence, I answer "not guilty."
The SECRETARY. Mr. WITHERS.
Mr. WITHERS rose.
The PRESIDENT *pro tempore*. Mr. Senator WITHERS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. WITHERS. Guilty.
The SECRETARY. Mr. WRIGHT.
Mr. WRIGHT rose.
The PRESIDENT *pro tempore*. Mr. Senator WRIGHT, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. WRIGHT. Mr. President, for reasons stated when the jurisdictional inquiry was before us, I have no difficulty upon that point. If I had, I should feel that the resolve of the Senate had settled it for me in the present attitude of this case, and that it must so remain until reversed or set aside; but because, as I understand it, a conviction under this article is asked for bribery as defined by the statute, as by that statute the accused must have received, asked, or acceptep the money or other thing with intent to have his decision or action on some question, matter, cause, or proceeding influenced thereby, and as the testimony so far from satisfying me of this cardinal fact, this intent, this influence, the very pivot or hinge on which the whole offense of bribery turns—I say because it does not satisfy me upon this point beyond a reasonable doubt, and because it is quite wanting in everything like directness and force or any approach to conclusiveness, (and I am not called to go beyond this,) I feel bound to vote "not guilty." My grounds for this conclusion I shall state more at length in the brief opinion which I shall file under the rule.
Mr. COCKRELL. Mr. President, I desire to state that my colleague, Mr. BOGY, is detained at home in consequence of the death of his daughter.
The PRESIDENT *pro tempore*. The Secretary will read the names of those voting.
The Secretary read the names of those voting guilty, and not guilty, as follows:

GUILTY—Messrs. Bayard, Booth, Cameron of Pennsylvania, Cockrell, Cooper, Davis, Dawes, Dennis, Edmunds, Gordon, Hamilton, Harvey, Hitchcock, Kelly, Kernan, Key, McCreery, McDonald, Merrimon, Mitchell, Morrill, Norwood, Oglesby, Randolph, Ransom, Robertson, Sargent, Saulsbury, Sherman, Stevenson, Thurman, Wadleigh, Wallace, Whyte, and Withers—35.

NOT GUILTY—Messrs. Allison, Anthony, Boutwell, Bruce, Cameron of Wisconsin, Christiancy, Conkling, Conover, Cragin, Dorsey, Eaton, Ferry, Frelinghuysen, Hamlin, Howe, Ingalls, Jones of Nevada, Logan, McMillan, Paddock, Patterson, Spencer, West, Windom, and Wright—25.

Mr. CONKLING. I inquire whether one additional member of the Senate was not present and so announced?
The PRESIDENT *pro tempore*. He was, but did not vote. On this article 35 Senators vote "guilty" and 25 Senators vote "not guilty," and one has declined to vote. Two-thirds of the members present not sustaining the first article, the respondent is acquitted upon this article. The Secretary will read the next article.
The Secretary read article 2, as follows:

ARTICLE II.

That said William W. Belknap, while he was in office as Secretary of War of the United States of America, did, at the city of Washington, in the District of Columbia, on the 4th day of November, 1873, willfully, corruptly, and unlawfully take and receive from one Caleb P. Marsh the sum of $1,500, in consideration that he would continue to permit one John S. Evans to maintain a trading establishment at Fort Sill, a military post of the United States, which said establishment said Belknap, as Secretary of War as aforesaid, was authorized by law to permit to be maintained at said military post, and which the said Evans had been before that time appointed by said Belknap to maintain; and that said Belknap, as Secretary of War as aforesaid, for said consideration, did corruptly permit the said Evans to continue to maintain the said trading establishment at said military post. And so the said Belknap was thereby guilty, while he was Secretary of War, of a high misdemeanor in his said office.

The PRESIDENT *pro tempore*. The Secretary will call the roll of Senators alphabetically.
The SECRETARY. Mr. ALCORN.
No response.
The SECRETARY. Mr. ALLISON.
Mr. ALLISON rose.
The PRESIDENT *pro tempore*. Mr. Senator ALLISON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. ALLISON. Mr. President, I answer "not guilty;" basing my vote upon this article on the same ground that I stated in regard to the first article, namely, that Mr. Belknap when impeached by the House of Representatives was a private citizen and not a civil officer of the United States within the meaning of the Constitution.
The SECRETARY. Mr. ANTHONY.
Mr. ANTHONY rose.
The PRESIDENT *pro tempore*. Mr. Senator ANTHONY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. ANTHONY. Believing that the respondent was not a civil officer of the United States, and was not liable to impeachment when impeachment was voted by the House of Representatives, I say "not guilty."
The SECRETARY. Mr. BARNUM.
No response.
The SECRETARY. Mr. BAYARD.
Mr. BAYARD rose.
The PRESIDENT *pro tempore*. Mr. Senator BAYARD, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. BAYARD. Guilty.
The SECRETARY. Mr. BOGY.
No response.
The SECRETARY. Mr. BOOTH.
Mr. BOOTH rose.

The PRESIDENT *pro tempore*. Mr. Senator BOOTH, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. BOOTH. Guilty.

The SECRETARY. Mr. BOUTWELL.

Mr. BOUTWELL rose.

The PRESIDENT *pro tempore*. Mr. Senator BOUTWELL, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. BOUTWELL. I say "not guilty," and for the reasons stated in connection with my vote upon the charges contained in the first article.

The SECRETARY. Mr. BRUCE.

Mr. BRUCE rose.

The PRESIDENT *pro tempore*. Mr. Senator BRUCE, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. BRUCE. For the reasons already stated on the first article, I answer "not guilty."

The SECRETARY. Mr. BURNSIDE.

No response.

The SECRETARY. Mr. CAMERON, of Pennsylvania.

Mr. CAMERON, of Pennsylvania, rose.

The PRESIDENT *pro tempore*. Mr. Senator CAMERON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. CAMERON, of Pennsylvania. Guilty.

The SECRETARY. Mr. CAMERON, of Wisconsin.

Mr. CAMERON, of Wisconsin, rose.

The PRESIDENT *pro tempore*. Mr. Senator CAMERON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. CAMERON, of Wisconsin. Not guilty, for want of jurisdiction.

The SECRETARY. Mr. CHRISTIANCY.

Mr. CHRISTIANCY rose.

The PRESIDENT *pro tempore*. Mr. Senator CHRISTIANCY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. CHRISTIANCY. For the reasons I have stated already in regard to the first article, I say "not guilty."

The SECRETARY. Mr. CLAYTON.

No response.

The SECRETARY. Mr. COCKRELL.

Mr. COCKRELL rose.

The PRESIDENT *pro tempore*. Mr. Senator COCKRELL, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. COCKRELL. Guilty.

The SECRETARY. Mr. CONKLING.

Mr. CONKLING rose.

The PRESIDENT *pro tempore*. Mr. Senator CONKLING, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. CONKLING. This impeachment being against a private citizen, who holds no civil office and held none when impeached, the Constitution, as I understand it, does not tolerate such a proceeding, and therefore I vote "not guilty," not being permitted, owing to a change in the standing rules of the Senate made yesterday by twenty-six Senators, to express in any other way my judgment that the whole proceeding is void.

The SECRETARY. Mr. CONOVER.

Mr. CONOVER rose.

The PRESIDENT *pro tempore*. Mr. Senator CONOVER, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. CONOVER. Not guilty.

The SECRETARY. Mr. COOPER.

Mr. COOPER rose.

The PRESIDENT *pro tempore*. Mr. Senator COOPER, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. COOPER. Guilty.

The SECRETARY. Mr. CRAGIN.

Mr. CRAGIN rose.

The PRESIDENT *pro tempore*. Mr. Senator CRAGIN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. CRAGIN. Without attempting to decide whether the charges against William W. Belknap as contained in this article are proven or not proven, I vote "not guilty," for the same reasons that I gave for my vote upon the first article.

The SECRETARY. Mr. DAVIS.

Mr. DAVIS rose.

The PRESIDENT *pro tempore*. Mr. Senator DAVIS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. DAVIS. Guilty.

The SECRETARY. Mr. DAWES.

Mr. DAWES rose.

The PRESIDENT *pro tempore*. Mr. Senator DAWES, how say you? Is the respondent, William W. Belknap, guilty or not guilty of the high misdemeanor as charged in this article?

Mr. DAWES. Guilty.

The SECRETARY. Mr. DENNIS.

Mr. DENNIS rose.

The PRESIDENT *pro tempore*. Mr. Senator DENNIS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. DENNIS. Guilty.

The SECRETARY. Mr. DORSEY.

Mr. DORSEY rose.

The PRESIDENT *pro tempore*. Mr. Senator DORSEY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. DORSEY. For the reasons already assigned, I vote "not guilty."

The SECRETARY. Mr. EATON.

Mr. EATON rose.

The PRESIDENT *pro tempore*. Mr. Senator EATON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. EATON. Not guilty, for the reasons which I gave as governing my vote upon the first of these articles.

The SECRETARY. Mr. EDMUNDS.

Mr. EDMUNDS rose.

The PRESIDENT *pro tempore*. Mr. Senator EDMUNDS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. EDMUNDS. Guilty.

The SECRETARY. Mr. FERRY.

Mr. FERRY rose.

The PRESIDENT *pro tempore*. Mr. Senator FERRY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. FERRY. Not guilty, for the same reasons upon which I based my conclusion in connection with the first article.

The SECRETARY. Mr. FRELINGHUYSEN.

Mr. FRELINGHUYSEN rose.

The PRESIDENT *pro tempore*. Mr. Senator FRELINGHUYSEN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. FRELINGHUYSEN. For the reasons I have given in response to the first article and for the reason stated in my opinion which is in the record, "not guilty."

The SECRETARY. Mr. GOLDTHWAITE.

No response.

The SECRETARY. Mr. GORDON.

Mr. GORDON rose.

The PRESIDENT *pro tempore*. Mr. Senator GORDON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. GORDON. Guilty.

The SECRETARY. Mr. HAMILTON.

Mr. HAMILTON rose.

The PRESIDENT *pro tempore*. Mr. Senator HAMILTON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. HAMILTON. Guilty.

The SECRETARY. Mr. HAMLIN.

Mr. HAMLIN rose.

The PRESIDENT *pro tempore*. Mr. Senator HAMLIN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. HAMLIN. For the same reasons which I gave upon the first article, I vote "not guilty."

The SECRETARY. Mr. HARVEY.

Mr. HARVEY rose.

The PRESIDENT *pro tempore*. Mr. Senator HARVEY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. HARVEY. For the same reasons stated for my vote on the first article, I vote on this article "guilty."

The SECRETARY. Mr. HITCHCOCK.

Mr. HITCHCOCK rose.

The PRESIDENT *pro tempore*. Mr. Senator HITCHCOCK, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. HITCHCOCK. Guilty.

The SECRETARY. Mr. HOWE.

Mr. HOWE rose.

The PRESIDENT *pro tempore*. Mr. Senator HOWE, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. HOWE. Not guilty.

The SECRETARY. Mr. INGALLS.

Mr. INGALLS rose.

The PRESIDENT *pro tempore*. Mr. Senator INGALLS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. INGALLS. Upon the grounds previously assigned in my response to the first article, I answer "not guilty."

The SECRETARY. Mr. JOHNSTON.
No response.
The SECRETARY. Mr. JONES, of Florida.
No response.
The SECRETARY. Mr. JONES, of Nevada.
Mr. JONES, of Nevada, rose.
The PRESIDENT *pro tempore*. Mr. Senator JONES, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. JONES, of Nevada. Not guilty.
The SECRETARY. Mr. KELLY.
Mr. KELLY rose.
The PRESIDENT *pro tempore*. Mr. Senator KELLY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. KELLY. Guilty.
The SECRETARY. Mr. KERNAN.
Mr. KERNAN rose.
The PRESIDENT *pro tempore*. Mr. Senator KERNAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. KERNAN. Guilty.
The SECRETARY. Mr. KEY.
Mr. KEY rose.
The PRESIDENT *pro tempore*. Mr. Senator KEY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. KEY. Guilty.
The SECRETARY. Mr. LOGAN.
Mr. LOGAN rose.
The PRESIDENT *pro tempore*. Mr. Senator LOGAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. LOGAN. Mr. President, for the same reasons I stated for my vote on the first article, and believing that this proceeding against a private citizen is fraught with great danger in setting a precedent for the unlawful exercise of power in the future, I vote "not guilty."
The SECRETARY. Mr. MCCREERY.
Mr. MCCREERY rose.
The PRESIDENT *pro tempore*. Mr. Senator MCCREERY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. MCCREERY. Guilty.
The SECRETARY. Mr. MCDONALD.
Mr. MCDONALD rose.
The PRESIDENT *pro tempore*. Mr. Senator MCDONALD, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. MCDONALD. Guilty.
The SECRETARY. Mr. MCMILLAN.
Mr. MCMILLAN rose.
The PRESIDENT *pro tempore*. Mr. Senator MCMILLAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. MCMILLAN. Not guilty, for want of jurisdiction.
The SECRETARY. Mr. MAXEY.
Mr. MAXEY rose.
The PRESIDENT *pro tempore*. Mr. Senator MAXEY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. MAXEY. Guilty.
The SECRETARY. Mr. MERRIMON.
Mr. MERRIMON rose.
The PRESIDENT *pro tempore*. Mr. Senator MERRIMON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. MERRIMON. Guilty.
The SECRETARY. Mr. MITCHELL.
Mr. MITCHELL rose.
The PRESIDENT *pro tempore*. Mr. Senator MITCHELL, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. MITCHELL. Guilty.
The SECRETARY. Mr. MORRILL.
Mr. MORRILL rose.
The PRESIDENT *pro tempore*. Mr. Senator MORRILL, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. MORRILL. Guilty.
The SECRETARY. Mr. MORTON.
No response.
The SECRETARY. Mr. NORWOOD.
Mr. NORWOOD rose.
The PRESIDENT *pro tempore*. Mr. Senator NORWOOD, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. NORWOOD. Guilty.
The SECRETARY. Mr. OGLESBY.
Mr. OGLESBY rose.
The PRESIDENT *pro tempore*. Mr. Senator OGLESBY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. OGLESBY. Under the statement made before as applicable to the first charge and to this alike, "guilty."
The SECRETARY. Mr. PADDOCK.
Mr. PADDOCK rose.
The PRESIDENT *pro tempore*. Mr. Senator PADDOCK, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. PADDOCK. Believing that under a republican form of government like ours the impeachment rules of a monarchical government like that of Great Britain should not furnish the light by which the Constitution shall be interpreted, and that such jurisdiction as is claimed in this case is without warrant of authority in the Constitution except through such interpretation and for the reasons before assigned, I vote "not guilty."
The SECRETARY. Mr. PATTERSON.
Mr. PATTERSON rose.
The PRESIDENT *pro tempore*. Mr. Senator PATTERSON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. PATTERSON. Not guilty.
The SECRETARY. Mr. RANDOLPH.
Mr. RANDOLPH rose.
The PRESIDENT *pro tempore*. Mr. Senator RANDOLPH, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. RANDOLPH. Guilty.
The SECRETARY. Mr. RANSOM.
Mr. RANSOM rose.
The PRESIDENT *pro tempore*. Mr. Senator RANSOM, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. RANSOM. Guilty.
The SECRETARY. Mr. ROBERTSON.
Mr. ROBERTSON rose.
The PRESIDENT *pro tempore*. Mr. Senator ROBERTSON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. ROBERTSON. Guilty.
The SECRETARY. Mr. SARGENT.
Mr. SARGENT rose.
The PRESIDENT *pro tempore*. Mr. Senator SARGENT, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. SARGENT. Guilty.
The SECRETARY. Mr. SAULSBURY.
Mr. SAULSBURY rose.
The PRESIDENT *pro tempore*. Mr. Senator SAULSBURY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. SAULSBURY. Guilty.
The SECRETARY. Mr. SHARON.
No response.
The SECRETARY. Mr. SHERMAN.
Mr. SHERMAN rose.
The PRESIDENT *pro tempore*. Mr. Senator SHERMAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. SHERMAN. Guilty.
The SECRETARY. Mr. SPENCER.
Mr. SPENCER rose.
The PRESIDENT *pro tempore*. Mr. Senator SPENCER, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. SPENCER. For reasons before stated I vote "not guilty."
The SECRETARY. Mr. STEVENSON.
Mr. STEVENSON rose.
The PRESIDENT *pro tempore*. Mr. Senator STEVENSON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. STEVENSON. Guilty.
The SECRETARY. Mr. THURMAN.
Mr. THURMAN rose.
The PRESIDENT *pro tempore*. Mr. Senator THURMAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. THURMAN. Guilty.
The SECRETARY. Mr. WADLEIGH.
Mr. WADLEIGH rose.
The PRESIDENT *pro tempore*. Mr. Senator WADLEIGH, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. WADLEIGH. Guilty.
The SECRETARY. Mr. WALLACE.
Mr. WALLACE rose.
The PRESIDENT *pro tempore*. Mr. Senator WALLACE, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. WALLACE. Guilty.

The SECRETARY. Mr. WEST.
Mr. WEST rose.
The PRESIDENT *pro tempore*. Mr. Senator WEST, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. WEST. For the reasons already assigned by me in giving my vote upon the first article, I vote "not guilty."
The SECRETARY. Mr. WHYTE.
Mr. WHYTE rose.
The PRESIDENT *pro tempore*. Mr. Senator WHYTE, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged by this article?
Mr. WHYTE. Guilty.
The SECRETARY. Mr. WINDOM.
Mr. WINDOM rose.
The PRESIDENT *pro tempore*. Mr. Senator WINDOM, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. WINDOM. Believing the proceedings in this case to be void for lack of jurisdiction, and without expressing an opinion upon the evidence, I answer "not guilty."
The SECRETARY. Mr. WITHERS.
Mr. WITHERS rose.
The PRESIDENT *pro tempore*. Mr. Senator WITHERS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. WITHERS. Guilty.
The SECRETARY. Mr. WRIGHT.
Mr. WRIGHT rose.
The PRESIDENT *pro tempore*. Mr. Senator WRIGHT, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor, as charged in this article?
Mr. WRIGHT. For reasons stated in giving my vote under the first article, which reasons I need not here repeat, I vote "not guilty."
The PRESIDENT *pro tempore*. The Secretary will read the names of those voting.
The Secretary read the names as follows:
GUILTY—Messrs. Bayard, Booth, Cameron of Pennsylvania, Cockrell, Cooper, Davis, Dawes, Dennis, Edmunds, Gordon, Hamilton, Harvey, Hitchcock, Kelly, Kernan, Key, McCreery, McDonald, Maxey, Merrimon, Mitchell, Morrill, Norwood, Oglesby, Randolph, Ransom, Robertson, Sargent, Saulsbury, Sherman, Stevenson, Thurman, Wadleigh, Wallace, Whyte, and Withers—36.
NOT GUILTY—Messrs. Allison, Anthony, Boutwell, Bruce, Cameron of Wisconsin, Christiancy, Conkling, Conover, Cragin, Dorsey, Eaton, Ferry, Frelinghuysen, Hamlin, Howe, Ingalls, Jones of Nevada, Logan, McMillan, Paddock, Patterson, Spencer, West, Windom, and Wright—25.
The PRESIDENT *pro tempore*. On this article thirty-six Senators vote guilty and twenty-five Senators vote not guilty. Two-thirds of the members present not sustaining the second article, the respondent is acquitted on this article. The Secretary will read the next article.
The Secretary read article 3, as follows:

ARTICLE III.

That said William W. Belknap was Secretary of War of the United States of America before and during the month of October, 1870, and continued in office as such Secretary of War until the 2d day of March, 1876; that as Secretary of War as aforesaid said Belknap had authority, under the laws of the United States, to appoint a person to maintain a trading establishment at Fort Sill, a military post of the United States, not in the vicinity of any city or town; that on the 10th day of October, 1870, said Belknap, as Secretary of War as aforesaid, did, at the city of Washington, in the District of Columbia, appoint one John S. Evans to maintain said trading establishment at said military post, and that said John S. Evans, by virtue of said appointment, has since, till the 2d day of March, 1876, maintained a trading establishment at said military post, and that said Evans, on the 8th day of October, 1870, before he was so appointed to maintain said trading establishment as aforesaid, and in order to procure said appointment and to be continued therein, agreed with one Caleb P. Marsh that, in consideration that said Belknap would appoint him, the said Evans, to maintain said trading establishment at said military post, at the instance and request of said Marsh, he, the said Evans, would pay to him a large sum of money, quarterly, in advance, from the date of his said appointment by said Belknap, to wit, $12,000 during the year immediately following the 10th day of October, 1870, and other large sums of money, quarterly, during each year that he, the said Evans, should be permitted by said Belknap to maintain said trading establishment at said post; that said Evans did pay to said Marsh said sum of money quarterly during each year after his said appointment, until the month of December, 1875, when the last of said payments was made; that said Marsh, upon the receipt of each of said payments, paid one-half thereof to him, the said Belknap. Yet the said Belknap, well knowing these facts, and having the power to remove said Evans from said position at any time and to appoint some other person to maintain said trading establishment, but criminally disregarding his duty as Secretary of War and basely prostituting his high office to his lust for private gain, did unlawfully and corruptly continue said Evans in said position and permit him to maintain said establishment at said military post during all of said time, to the great injury and damage of the officers and soldiers of the Army of the United States stationed at said post, as well as of emigrants, freighters, and other citizens of the United States, against public policy, and to the great disgrace and detriment of the public service; whereby the said William W. Belknap was, as Secretary of War as aforesaid, guilty of high crimes and misdemeanors in office.

The PRESIDENT *pro tempore*. The Secretary will call the roll of Senators.
The SECRETARY. Mr. ALCORN.
No response.
The SECRETARY. Mr. ALLISON.
Mr. ALLISON rose.
The PRESIDENT *pro tempore*. Mr. Senator ALLISON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. ALLISON. For the reasons already assigned, I answer "not guilty."
The SECRETARY. Mr. ANTHONY.
Mr. ANTHONY rose.
The PRESIDENT *pro tempore*. Mr. Senator ANTHONY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. ANTHONY. For the reason assigned in my previous vote, that the respondent was not impeachable, I say "not guilty."
The SECRETARY. Mr. BARNUM.
No response.
The SECRETARY. Mr. BAYARD.
Mr. BAYARD rose.
The PRESIDENT *pro tempore*. Mr. Senator BAYARD, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. BAYARD. Guilty.
The SECRETARY. Mr. BOGY.
No response.
The SECRETARY. Mr. BOOTH.
Mr. BOOTH rose.
The PRESIDENT *pro tempore*. Mr. Senator BOOTH, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. BOOTH. Guilty.
The SECRETARY. Mr. BOUTWELL.
Mr. BOUTWELL rose.
The PRESIDENT *pro tempore*. Mr. Senator BOUTWELL, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. BOUTWELL. I say "not guilty," for the reasons stated by me in connection with my vote upon the charges set forth in the first article.
The SECRETARY. Mr. BRUCE.
Mr. BRUCE rose.
The PRESIDENT *pro tempore*. Mr. Senator BRUCE, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. BRUCE. For want of jurisdiction, I answer "not guilty."
The SECRETARY. Mr. BURNSIDE.
No response.
The SECRETARY. Mr. CAMERON, of Pennsylvania.
Mr. CAMERON, of Pennsylvania, rose.
The PRESIDENT *pro tempore*. Mr. Senator CAMERON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. CAMERON, of Pennsylvania. Guilty.
The SECRETARY. Mr. CAMERON, of Wisconsin.
Mr. CAMERON, of Wisconsin, rose.
The PRESIDENT *pro tempore*. Mr. Senator CAMERON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. CAMERON, of Wisconsin. Not guilty, for want of jurisdiction.
The SECRETARY. Mr. CHRISTIANCY.
Mr. CHRISTIANCY rose.
The PRESIDENT *pro tempore*. Mr. Senator CHRISTIANCY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. CHRISTIANCY. For the reasons I have already given in reference to the first article and for the further reason that neither this article nor any other article of the impeachment could be held good under the statute upon a motion in arrest of judgment in any criminal court, omitting, as it does, to charge the intent required by the statute, and, therefore, no statutory offense being charged and no proof of such intent being of any avail where it is not charged in the articles, and there being no article appropriate to an impeachable offense independent of the statute, I answer "not guilty."
The SECRETARY. Mr. CLAYTON.
No response.
The SECRETARY. Mr. COCKRELL.
Mr. COCKRELL rose.
The PRESIDENT *pro tempore*. Mr. Senator COCKRELL, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. COCKRELL. Guilty.
The SECRETARY. Mr. CONKLING.
Mr. CONKLING rose.
The PRESIDENT *pro tempore*. Mr. Senator CONKLING, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. CONKLING. To vote guilty on this impeachment I must on my oath find three things: first, that impeachment will lie against a private citizen holding no civil office; second, that the acts charged are impeachable; and third, that they are proved. I cannot find the first of these things, and therefore I must vote "not guilty," in which vote I consider no question except the first one,—the question of jurisdiction.
The SECRETARY. Mr. CONOVER.
Mr. CONOVER rose.
The PRESIDENT *pro tempore*. Mr. Senator CONOVER, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. CONOVER. Not guilty.
The SECRETARY. Mr. COOPER.
Mr. COOPER rose.
The PRESIDENT *pro tempore*. Mr. Senator COOPER, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. COOPER. Guilty.
The SECRETARY. Mr. CRAGIN.
Mr. CRAGIN rose.
The PRESIDENT *pro tempore*. Mr. Senator CRAGIN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. CRAGIN. My judgment tells me to vote "not guilty," for the reason that I am of opinion that the Senate has no jurisdiction to try or convict said Belknap on any charges whatsoever, because he is not, and was not at the time of his impeachment by the House of Representatives, a civil officer within the meaning of the Constitution of the United States.
The SECRETARY. Mr. DAVIS.
Mr. DAVIS rose.
The PRESIDENT *pro tempore*. Mr. Senator DAVIS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. DAVIS. Guilty.
The SECRETARY. Mr. DAWES.
Mr. DAWES rose.
The PRESIDENT *pro tempore*. Mr. Senator DAWES, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. DAWES. Guilty.
The SECRETARY. Mr. DENNIS.
Mr. DENNIS rose.
The PRESIDENT *pro tempore*. Mr. Senator DENNIS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. DENNIS. Guilty.
The SECRETARY. Mr. DORSEY.
Mr. DORSEY rose.
The PRESIDENT *pro tempore*. Mr. Senator DORSEY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. DORSEY. For the reason I assigned in voting on the preceding articles, I repeat the vote "not guilty."
The SECRETARY. Mr. EATON.
Mr. EATON rose.
The PRESIDENT *pro tempore*. Mr. Senator EATON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. EATON. Not guilty. I am governed in this vote by the same reasons which I gave in announcing my vote on the first article.
The SECRETARY. Mr. EDMUNDS.
Mr. EDMUNDS rose.
The PRESIDENT *pro tempore*. Mr. Senator EDMUNDS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. EDMUNDS. Guilty.
The SECRETARY. Mr. FERRY.
Mr. FERRY rose.
The PRESIDENT *pro tempore*. Mr. Senator FERRY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. FERRY. For a like reason to that given on articles 1 and 2—a want of jurisdiction—I vote "not guilty."
The SECRETARY. Mr. FRELINGHUYSEN.
Mr. FRELINGHUYSEN rose.
The PRESIDENT *pro tempore*. Mr. Senator FRELINGHUYSEN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. FRELINGHUYSEN. For the reasons I have already given, "not guilty."
The SECRETARY. Mr. GOLDTHWAITE.
No response.
The SECRETARY. Mr. GORDON.
Mr. GORDON rose.
The PRESIDENT *pro tempore*. Mr. Senator GORDON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. GORDON. Guilty.
The SECRETARY. Mr. HAMILTON.
Mr. HAMILTON rose.
The PRESIDENT *pro tempore*. Mr. Senator HAMILTON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. HAMILTON. Guilty.
The SECRETARY. Mr. HAMLIN.
Mr. HAMLIN rose.
The PRESIDENT *pro tempore*. Mr. Senator HAMLIN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. HAMLIN. For reasons given upon the first article, "not guilty."
The SECRETARY. Mr. HARVEY.
Mr. HARVEY rose.
The PRESIDENT *pro tempore*. Mr. Senator HARVEY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. HARVEY. For the reasons stated in connection with my vote on the first article, I vote on this article "guilty."
The SECRETARY. Mr. HITCHCOCK.
Mr. HITCHCOCK rose.
The PRESIDENT *pro tempore*. Mr. Senator HITCHCOCK, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. HITCHCOCK. Guilty.
The SECRETARY. Mr. HOWE.
Mr. HOWE rose.
The PRESIDENT *pro tempore*. Mr. Senator HOWE, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. HOWE. Not guilty.
The SECRETARY. Mr. INGALLS.
Mr. INGALLS rose.
The PRESIDENT *pro tempore*. Mr. Senator INGALLS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. INGALLS. For the same reasons and upon the same grounds heretofore assigned, I answer "not guilty."
The SECRETARY. Mr. JOHNSTON.
No response.
The SECRETARY. Mr. JONES, of Florida.
No response.
The SECRETARY. Mr. JONES, of Nevada.
Mr. JONES, of Nevada, rose.
The PRESIDENT *pro tempore*. Mr. Senator JONES, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. JONES, of Nevada. Not guilty.
The SECRETARY. Mr. KELLY.
Mr. KELLY rose.
The PRESIDENT *pro tempore*. Mr. Senator KELLY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. KELLY. Guilty.
The SECRETARY. Mr. KERNAN.
Mr. KERNAN rose.
The PRESIDENT *pro tempore*. Mr. Senator KERNAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. KERNAN. Guilty.
The SECRETARY. Mr. KEY.
Mr. KEY rose.
The PRESIDENT *pro tempore*. Mr. Senator KEY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. KEY. Guilty.
The SECRETARY. Mr. LOGAN.
Mr. LOGAN rose.
The PRESIDENT *pro tempore*. Mr. Senator LOGAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. LOGAN. Mr. President, this proceeding being in direct opposition to the well-established construction of the Constitution of the United States for over three-quarters of a century, and believing that it was never contemplated by the framers of our fundamental law that private citizens should be arraigned and tried before the Senate of the United States on articles of impeachment in order to follow old English precedents, but that this was one of the things intended to be avoided, and for the reasons heretofore given for my vote on the first article, I vote "not guilty."
The SECRETARY. Mr. MCCREERY.
Mr. MCCREERY rose.
The PRESIDENT *pro tempore*. Mr. Senator MCCREERY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. MCCREERY. Guilty.
The SECRETARY. Mr. MCDONALD.
Mr. MCDONALD rose.
The PRESIDENT *pro tempore*. Mr. Senator MCDONALD, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. MCDONALD. Guilty.
The SECRETARY. Mr. MCMILLAN.
Mr. MCMILLAN rose.
The PRESIDENT *pro tempore*. Mr. Senator MCMILLAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?
Mr. MCMILLAN. Not guilty, for want of jurisdiction.
The SECRETARY. Mr. MAXEY.
Mr. MAXEY rose.

The PRESIDENT *pro tempore*. Mr. Senator MAXEY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. MAXEY. Guilty.

The SECRETARY. Mr. MERRIMON.

Mr. MERRIMON rose.

The PRESIDENT *pro tempore*. Mr. Senator MERRIMON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. MERRIMON. Guilty.

The SECRETARY. Mr. MITCHELL.

Mr. MITCHELL rose.

The PRESIDENT *pro tempore*. Mr. Senator MITCHELL, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. MITCHELL. Guilty.

The SECRETARY. Mr. MORRILL.

Mr. MORRILL rose.

The PRESIDENT *pro tempore*. Mr. Senator MORRILL, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. MORRILL. Guilty.

The SECRETARY. Mr. MORTON.

No response.

The SECRETARY. Mr. NORWOOD.

Mr. NORWOOD rose.

The PRESIDENT *pro tempore*. Mr. Senator NORWOOD, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. NORWOOD. Guilty.

The SECRETARY. Mr. OGLESBY.

Mr. OGLESBY rose.

The PRESIDENT *pro tempore*. Mr. Senator OGLESBY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. OGLESBY. Guilty.

The SECRETARY. Mr. PADDOCK.

Mr. PADDOCK rose.

The PRESIDENT *pro tempore*. Mr. Senator PADDOCK, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. PADDOCK. For the reasons before assigned, and without reference to the matters charged in the article, I vote "not guilty."

The SECRETARY. Mr. PATTERSON.

Mr. PATTERSON rose.

The PRESIDENT *pro tempore*. Mr. Senator PATTERSON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. PATTERSON. Not guilty.

The SECRETARY. Mr. RANDOLPH.

Mr. RANDOLPH rose.

The PRESIDENT *pro tempore*. Mr. Senator RANDOLPH, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. RANDOLPH. Guilty.

The SECRETARY. Mr. RANSOM.

Mr. RANSOM rose.

The PRESIDENT *pro tempore*. Mr. Senator RANSOM, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. RANSOM. Guilty.

The SECRETARY. Mr. ROBERTSON.

Mr. ROBERTSON rose.

The PRESIDENT *pro tempore*. Mr. Senator ROBERTSON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. ROBERTSON. Guilty.

The SECRETARY. Mr. SARGENT.

Mr. SARGENT rose.

The PRESIDENT *pro tempore*. Mr. Senator SARGENT. How say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. SARGENT. Guilty.

The SECRETARY. Mr. SAULSBURY.

Mr. SAULSBURY rose.

The PRESIDENT *pro tempore*. Mr. Senator SAULSBURY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. SAULSBURY. Guilty.

The SECRETARY. Mr. SHARON.

No response.

The SECRETARY. Mr. SHERMAN.

Mr. SHERMAN rose.

The PRESIDENT *pro tempore*. Mr. Senator SHERMAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. SHERMAN. Guilty.

The SECRETARY. Mr. SPENCER.

Mr. SPENCER rose.

The PRESIDENT *pro tempore*. Mr. Senator SPENCER, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. SPENCER. For the reasons I have already stated I vote "not guilty."

The SECRETARY. Mr. STEVENSON.

Mr. STEVENSON rose.

The PRESIDENT *pro tempore*. Mr. Senator STEVENSON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. STEVENSON. Guilty.

The SECRETARY. Mr. THURMAN.

Mr. THURMAN rose.

The PRESIDENT *pro tempore*. Mr. Senator THURMAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. THURMAN. Guilty.

The SECRETARY. Mr. WADLEIGH.

Mr. WADLEIGH rose.

The PRESIDENT *pro tempore*. Mr. Senator WADLEIGH, how say you? Is the respondent William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. WADLEIGH. Guilty.

The SECRETARY. Mr. WALLACE.

Mr. WALLACE rose.

The PRESIDENT *pro tempore*. Mr. Senator WALLACE, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. WALLACE. Guilty.

The SECRETARY. Mr. WEST.

Mr. WEST rose.

The PRESIDENT *pro tempore*. Mr. Senator WEST, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. WEST. For the reason already assigned by me in giving my vote on the first article, I vote "not guilty."

The SECRETARY. Mr. WHYTE.

Mr. WHYTE rose.

The PRESIDENT *pro tempore*. Mr. Senator WHYTE, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. WHYTE. Guilty.

The SECRETARY. Mr. WINDOM.

Mr. WINDOM rose.

The PRESIDENT *pro tempore*. Mr. Senator WINDOM, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. WINDOM. For reasons already assigned, I answer "not guilty."

The SECRETARY. Mr. WITHERS.

Mr. WITHERS rose.

The PRESIDENT *pro tempore*. Mr. Senator WITHERS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. WITHERS. Guilty.

The SECRETARY. Mr. WRIGHT.

Mr. WRIGHT rose.

The PRESIDENT *pro tempore*. Mr. Senator WRIGHT, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. WRIGHT. I believe we have jurisdiction to determine the question. I decide the case upon the facts, on the testimony alone, and upon this testimony I find the defendant "not guilty."

The PRESIDENT *pro tempore*. The Secretary will read the names of the Senators voting.

The Secretary read as follows:

GUILTY—Messrs. Bayard, Booth, Cameron of Pennsylvania, Cockrell, Cooper, Davis, Dawes, Dennis, Edmunds, Gordon, Hamilton, Harvey, Hitchcock, Kelly, Kernan, Key, McCreery, McDonald, Maxey, Merrimon, Mitchell, Morrill, Norwood, Oglesby, Randolph, Ransom, Robertson, Sargent, Saulsbury, Sherman, Stevenson, Thurman, Wadleigh, Wallace, Whyte, and Withers—36.

NOT GUILTY—Messrs. Allison, Anthony, Boutwell, Bruce, Cameron of Wisconsin, Christiancy, Conkling, Conover, Cragin, Dorsey, Eaton, Ferry, Frelinghuysen, Hamlin, Howe, Ingalls Jones of Nevada, Logan, McMillan, Paddock, Patterson, Spencer, West, Windom, and Wright—25.

The PRESIDENT *pro tempore*. On this article 36 Senators vote guilty and 25 Senators not guilty. Two-thirds of the members present not sustaining the third article, the respondent is acquitted on this article. The next article will be read.

The Secretary read as follows:

ARTICLE IV.

That said William W. Belknap, while he was in office and acting as Secretary of War of the United States of America, did, on the 10th day of October, 1870, in the exercise of the power and authority vested in him as Secretary of War as aforesaid by law, appoint one John S. Evans to maintain a trading establishment at Fort Sill, a military post of the United States, and he, the said Belknap, did receive, from one Caleb P. Marsh, large sums of money for and in consideration of his having so appointed said John S. Evans to maintain said trading establishment at said military post, and for continuing him therein, whereby he has been guilty of high crimes and misdemeanors in his said office.

Specification 1.—On or about the 2d day of November, 1870, said William W. Belknap, while Secretary of War as aforesaid, did receive from Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and for continuing him therein.

Specification 2.—On or about the 17th day of January, 1871, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh

$1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and for continuing him therein.

Specification 3.—On or about the 18th day of April, 1871, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 4.—On or about the 25th day of July, 1871, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 5.—On or about the 10th day of November, 1871, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 6.—On or about the 15th day of January, 1872, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 7.—On or about the 13th day of June, 1872, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 8.—On or about the 22d day of November, 1872, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 9.—On or about the 28th day of April, 1873, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,000, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 10.—On or about the 16th day of June, 1873, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,700, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 11.—On or about the 4th day of November, 1873, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 12.—On or about the 23d day of January, 1874, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 13.—On or about the 16th day of April, 1874, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 14.—On or about the 9th day of October, 1874, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 15.—On or about the 24th day of May, 1875, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 16.—On or about the 17th day of November, 1875, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $1,500, in consideration of his having appointed said John S. Evans to maintain a trading establishment at Fort Sill aforesaid, and continuing him therein.

Specification 17.—On or about the 15th day of January, 1876, the said William W. Belknap, while Secretary of War as aforesaid, did receive from said Caleb P. Marsh $750, in consideration of his having appointed said John S. Evans to maintain a a trading establishment at Fort Sill aforesaid, and continuing him therein.

The PRESIDENT *pro tempore*. The Secretary will call the roll.

The SECRETARY. Mr. ALCORN.

No response.

The SECRETARY. Mr. ALLISON.

Mr. ALLISON rose.

The PRESIDENT *pro tempore*. Mr. Senator ALLISON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. ALLISON. For the reasons I have already stated, I answer "not guilty."

The SECRETARY. Mr. ANTHONY.

Mr. ANTHONY rose.

The PRESIDENT *pro tempore*. Mr. Senator ANTHONY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. ANTHONY. For the reason I have already stated, that the respondent is not impeachable, I vote "not guilty."

The SECRETARY. Mr. BARNUM.

No response.

The SECRETARY. Mr. BAYARD.

Mr. BAYARD rose.

The PRESIDENT *pro tempore*. Mr. Senator BAYARD, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. BAYARD. Guilty.

The SECRETARY. Mr. BOGY.

No response.

The SECRETARY. Mr. BOOTH.

Mr. BOOTH rose.

The PRESIDENT *pro tempore*. Mr. Senator BOOTH, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. BOOTH. Guilty. Holding as I do that the question of jurisdiction has been decided by a vote competent to decide it, and is not now before this tribunal at all, and that it can be raised at any time before final judgment as a distinct question, and that it is always and under all circumstances a question distinct from that of fact, and that the question of fact as to guilt or innocence is the only one upon which the Constitution requires a concurrence of two-thirds, and believing further that the testimony is conclusive of guilt and that I am only called upon to vote on the question of guilt or innocence, I vote "guilty."

The SECRETARY. Mr. BOUTWELL.

Mr. BOUTWELL rose.

The PRESIDENT *pro tempore*. Mr. Senator BOUTWELL, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. BOUTWELL. I say "not guilty," for the reasons stated in connection with my vote on the first article.

The SECRETARY. Mr. BRUCE.

Mr. BRUCE rose.

The PRESIDENT *pro tempore*. Mr. Senator BRUCE, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. BRUCE. For the reasons stated in connection with my vote on the first and all other articles, I answer "not guilty."

The SECRETARY. Mr. BURNSIDE.

No response.

The SECRETARY. Mr. CAMERON, of Pennsylvania.

Mr. CAMERON, of Pennsylvania, rose.

The PRESIDENT *pro tempore*. Mr. Senator CAMERON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. CAMERON, of Pennsylvania. Guilty.

The SECRETARY. Mr. CAMERON, of Wisconsin.

Mr. CAMERON, of Wisconsin, rose.

The PRESIDENT *pro tempore*. Mr. Senator CAMERON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. CAMERON, of Wisconsin. Not guilty, for want of jurisdiction.

The SECRETARY. Mr. CHRISTIANCY.

Mr. CHRISTIANCY rose.

The PRESIDENT *pro tempore*. Mr. Senator CHRISTIANCY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. CHRISTIANCY. For reasons already given under other articles, I say "not guilty," and for a further reason which I might state. Believing that this Senate sitting as a court has no constitutional power to try the impeachment and that the decision of less than a majority of two-thirds in favor of jurisdiction is of no more validity than the same vote would be upon the facts, and that the question of jurisdiction is always involved in every conviction, for these reasons I vote "not guilty."

The SECRETARY. Mr. CLAYTON.

No response.

The SECRETARY. Mr. COCKRELL.

Mr. COCKRELL rose.

The PRESIDENT *pro tempore*. Mr. Senator COCKRELL, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. COCKRELL. Guilty.

The SECRETARY. Mr. CONKLING.

Mr. CONKLING rose.

The PRESIDENT *pro tempore*. Mr. Senator CONKLING, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. CONKLING. This being the first attempt in our history to stretch political power of impeachment over all the citizens of the United States, I vote "not guilty" as the only mode of recording my judgment against such a doctrine; and I so vote with a sense of relief arising from the fact that the respondent is triable and is now in fact indicted under statutes which impose on him, if convicted, in addition to other punishments, perpetual disability to hold office; and this is all which could follow a conviction here.

The SECRETARY. Mr. CONOVER.

Mr. CONOVER rose.

The PRESIDENT *pro tempore*. Mr. Senator CONOVER, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. CONOVER. Not guilty.

The SECRETARY. Mr. COOPER.

Mr. COOPER rose.

The PRESIDENT *pro tempore*. Mr. Senator COOPER, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. COOPER. Guilty.

The SECRETARY. Mr. CRAGIN.

Mr. CRAGIN rose.

The PRESIDENT *pro tempore*. Mr. Senator CRAGIN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. CRAGIN. Mr. President, I condemn the acts charged against the respondent in this article, and I am inclined to think the proof sustains the charges; but for the reasons which I have given for voting not guilty on former articles, that this Senate has no jurisdiction to try a private citizen, I am compelled to vote "not guilty."

The SECRETARY. Mr. DAVIS.

Mr. DAVIS rose.

The PRESIDENT *pro tempore*. Mr. Senator DAVIS, how say you?

Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. DAVIS. Guilty.

The SECRETARY. Mr. DAWES.

Mr. DAWES rose.

The PRESIDENT *pro tempore*. Mr. Senator DAWES, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. DAWES. Believing that the question of jurisdiction has been settled by the expressed opinions of the framers of the Constitution and by the unbroken precedents in all our political history, and believing that the allegations have been sustained by the evidence, I vote "guilty."

The SECRETARY. Mr. DENNIS.

Mr. DENNIS rose.

The PRESIDENT *pro tempore*. Mr. Senator DENNIS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. DENNIS. Guilty.

The SECRETARY. Mr. DORSEY.

Mr. DORSEY rose.

The PRESIDENT *pro tempore*. Mr. Senator DORSEY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. DORSEY. For the reason that the Senate has no jurisdiction to try this article or any other, I vote "not guilty."

The SECRETARY. Mr. EATON.

Mr. EATON rose.

The PRESIDENT *pro tempore*. Mr. Senator EATON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. EATON. My vote on this article is governed by the same reasons which have heretofore governed me; I vote "not guilty."

The SECRETARY. Mr. EDMUNDS.

Mr. EDMUNDS rose.

The PRESIDENT *pro tempore*. Mr. Senator EDMUNDS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. EDMUNDS. Guilty.

The SECRETARY. Mr. FERRY.

The PRESIDENT *pro tempore*. Mr. Senator FERRY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. FERRY. For the same reasons which I expressed as governing my judgment on article 1 and other articles, I vote "not guilty."

The SECRETARY. Mr. FRELINGHUYSEN.

Mr. FRELINGHUYSEN rose.

The PRESIDENT *pro tempore*. Mr. Senator FRELINGHUYSEN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. FRELINGHUYSEN. For the reasons I have already indicated, "not guilty."

The SECRETARY. Mr. GOLDTHWAITE.

No response.

The SECRETARY. Mr. GORDON.

Mr. GORDON rose.

The PRESIDENT *pro tempore*. Mr. Senator GORDON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. GORDON. Guilty.

The SECRETARY. Mr. HAMILTON.

Mr. HAMILTON rose.

The PRESIDENT *pro tempore*. Mr. Senator HAMILTON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. HAMILTON. Guilty.

The SECRETARY. Mr. HAMLIN.

Mr. HAMLIN rose.

The PRESIDENT *pro tempore*. Mr. Senator HAMLIN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. HAMLIN. Believing the proceedings in this case in violation of the unbroken precedents of the Government from the day of its foundation to the present time, and believing that none but a civil officer named in the Constitution is the subject of impeachment, and believing the proceeding one which may well and ought to alarm the public, and also for the reasons which I have already given, I vote "not guilty."

The SECRETARY. Mr. HARVEY.

Mr. HARVEY rose.

The PRESIDENT *pro tempore*. Mr. Senator HARVEY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. HARVEY. For the reasons given in connection with my vote on the first article, I vote "guilty" on this article.

The SECRETARY. Mr. HITCHCOCK.

Mr. HITCHCOCK rose.

The PRESIDENT *pro tempore*. Mr. Senator HITCHCOCK, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. HITCHCOCK. Guilty.

The SECRETARY. Mr. HOWE.

Mr. HOWE rose.

The PRESIDENT *pro tempore*. Mr. Senator HOWE, how say you? Is the respondent, William W. Belknap, guilty of high crimes and misdemeanors as charged in this article?

Mr. HOWE. Not guilty. I have already indicated the reasons which control all my votes.

The SECRETARY. Mr. INGALLS.

Mr. INGALLS rose.

The PRESIDENT *pro tempore*. Mr. Senator INGALLS, how say you? Is the respondent, William W. Belknap, guilty of high crimes and misdemeanors as charged in this article?

Mr. INGALLS. Having heard no satisfactory or sufficient reasons for changing my previous opinion, I vote "not guilty."

The SECRETARY. Mr. JOHNSTON.

No response.

The SECRETARY. Mr. JONES, of Florida.

No response.

The SECRETARY. Mr. JONES, of Nevada.

Mr. JONES, of Nevada, rose.

The PRESIDENT *pro tempore*. Mr. Senator JONES, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. JONES, of Nevada. Not guilty.

The SECRETARY. Mr. KELLY.

Mr. KELLY rose.

The PRESIDENT *pro tempore*. Mr. Senator KELLY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. KELLY. Guilty.

The SECRETARY. Mr. KERNAN.

Mr. KERNAN rose.

The PRESIDENT *pro tempore*. Mr. Senator KERNAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. KERNAN. Guilty.

The SECRETARY. Mr. KEY.

Mr. KEY rose.

The PRESIDENT *pro tempore*. Mr. Senator KEY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. KEY. Guilty.

The SECRETARY. Mr. LOGAN.

Mr. LOGAN rose.

The PRESIDENT *pro tempore*. Mr. Senator LOGAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. LOGAN. Mr. President, I condemn the conduct of the respondent as strongly as any one; but there being no foundation either in the Constitution or the well-settled precedents of this country for this proceeding, in my judgment the proceeding is void. This power of trial should never be exercised by the Senate of the United States except in cases clearly within the meaning of the Constitution. This case not being one of that character should not have been entertained by the Senate at all; and for the reasons heretofore given in connection with my vote on the preceding articles, I vote "not guilty."

The SECRETARY. Mr. MCCREERY.

Mr. MCCREERY rose.

The PRESIDENT *pro tempore*. Mr. Senator MCCREERY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. MCCREERY. Guilty.

The SECRETARY. Mr. MCDONALD.

Mr. MCDONALD rose.

The PRESIDENT *pro tempore*. Mr. Senator MCDONALD, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. MCDONALD. Guilty.

The SECRETARY. Mr. MCMILLAN.

Mr. MCMILLAN rose.

The PRESIDENT *pro tempore*. Mr. Senator MCMILLAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. MCMILLAN. Not guilty for want of jurisdiction.

The SECRETARY. Mr. MAXEY.

Mr. MAXEY rose.

The PRESIDENT *pro tempore*. Mr. Senator MAXEY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. MAXEY. Guilty.

The SECRETARY. Mr. MERRIMON.

Mr. MERRIMON rose.

The PRESIDENT *pro tempore*. Mr. Senator MERRIMON, how say you? Is the respondent guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. MERRIMON. Guilty.

The SECRETARY. Mr. MITCHELL.

Mr. MITCHELL rose.

The PRESIDENT *pro tempore*. Mr. Senator MITCHELL, how say

you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. MITCHELL. Guilty.

The SECRETARY. Mr. MORRILL.

Mr. MORRILL rose.

The PRESIDENT *pro tempore*. Mr Senator MORRILL, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. MORRILL. Guilty.

The SECRETARY. Mr. MORTON.

No response.

The SECRETARY. Mr. NORWOOD.

Mr. NORWOOD rose.

The PRESIDENT *pro tempore*. Mr. Senator NORWOOD, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. NORWOOD. Guilty.

The SECRETARY. Mr. OGLESBY.

Mr. OGLESBY rose.

The PRESIDENT *pro tempore*. Mr. Senator OGLESBY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. OGLESBY. Guilty.

The SECRETARY. Mr. PADDOCK.

Mr. PADDOCK rose.

The PRESIDENT *pro tempore*. Mr. Senator PADDOCK, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. PADDOCK. For the reasons before assigned, and excluding any question of fact as charged in this article, I vote "not guilty."

The SECRETARY. Mr. PATTERSON.

Mr. PATTERSON rose.

The PRESIDENT *pro tempore*. Mr. Senator PATTERSON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. PATTERSON. Not guilty.

The SECRETARY. Mr. RANDOLPH.

Mr. RANDOLPH rose.

The PRESIDENT *pro tempore*. Mr. Senator RANDOLPH, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. RANDOLPH. Guilty.

The SECRETARY. Mr. RANSOM.

Mr. RANSOM rose.

The PRESIDENT *pro tempore*. Mr. Senator RANSOM, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. RANSOM. Guilty.

The SECRETARY. Mr. ROBERTSON.

Mr. ROBERTSON rose.

The PRESIDENT *pro tempore*. Mr. Senator ROBERTSON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. ROBERTSON. Guilty.

The SECRETARY. Mr. SARGENT.

Mr. SARGENT rose.

The PRESIDENT *pro tempore*. Mr. Senator SARGENT, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. SARGENT. Guilty.

The SECRETARY. Mr. SAULSBURY.

Mr. SAULSBURY rose.

The PRESIDENT *pro tempore*. Mr. Senator SAULSBURY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. SAULSBURY. Guilty.

The SECRETARY. Mr. SHARON.

No response.

The SECRETARY. Mr. SHERMAN.

Mr. SHERMAN rose.

The PRESIDENT *pro tempore*. Mr. Senator SHERMAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. SHERMAN. Guilty.

The SECRETARY. Mr. SPENCER.

Mr. SPENCER rose.

The PRESIDENT *pro tempore*. Mr. Senator SPENCER, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. SPENCER. For the reasons I have already stated, I vote "not guilty."

The SECRETARY. Mr. STEVENSON.

Mr. STEVENSON rose.

The PRESIDENT *pro tempore*. Mr. Senator STEVENSON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. STEVENSON. Guilty.

The SECRETARY. Mr. THURMAN.

Mr. THURMAN rose.

The PRESIDENT *pro tempore*. Mr. Senator THURMAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. THURMAN. Guilty.

The SECRETARY. Mr. WADLEIGH.

Mr. WADLEIGH rose.

The PRESIDENT *pro tempore*. Mr. Senator WADLEIGH, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. WADLEIGH. Guilty.

The SECRETARY. Mr. WALLACE.

Mr. WALLACE rose.

The PRESIDENT *pro tempore*. Mr. Senator WALLACE, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. WALLACE. Guilty.

The SECRETARY. Mr. WEST.

Mr. WEST rose.

The PRESIDENT *pro tempore*. Mr. Senator WEST, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. WEST. For the reason already assigned in connection with my first vote, I vote "not guilty."

The SECRETARY. Mr. WHYTE.

Mr. WHYTE rose.

The PRESIDENT *pro tempore*. Mr. Senator WHYTE, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. WHYTE. Guilty.

The SECRETARY. Mr. WINDOM.

Mr. WINDOM rose.

The PRESIDENT *pro tempore*. Mr. Senator WINDOM, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. WINDOM. For reasons already stated, I answer "not guilty."

The SECRETARY. Mr. WITHERS.

Mr. WITHERS rose.

The PRESIDENT *pro tempore*. Mr. Senator WITHERS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. WITHERS. Guilty.

The SECRETARY. Mr. WRIGHT.

Mr. WRIGHT rose.

The PRESIDENT *pro tempore*. Mr. Senator WRIGHT, how say you? Is the respondent, William W. Belknap, guilty or not guilty of high crimes and misdemeanors as charged in this article?

Mr. WRIGHT. On my responsibility as a member of this court I am to answer whether the defendant is guilty or not guilty as charged in this article. I have nothing to do with anything else. Looking at the testimony and giving to it all its weight, I feel constrained to say that the article is not sustained by that weight of testimony required in this court and all courts exercising like jurisdiction. I vote "not guilty."

The names of those voting guilty and not guilty, respectively, were read, as follows:

GUILTY—Messrs. Bayard, Booth, Cameron of Pennsylvania, Cockrell, Cooper, Davis, Dawes, Dennis, Edmunds, Gordon, Hamilton, Harvey, Hitchcock, Kelly, Kernan, Key, McCreery, McDonald, Maxey, Merrimon, Mitchell, Morrill, Norwood, Oglesby, Randolph, Ransom, Robertson, Sargent, Saulsbury, Sherman, Stevenson, Thurman, Wadleigh, Wallace, Whyte, and Withers—36.

NOT GUILTY—Messrs. Allison, Anthony, Boutwell, Bruce, Cameron of Wisconsin, Christiancy, Conkling, Conover, Cragin, Dorsey, Eaton, Ferry, Frelinghuysen, Hamlin, Howe, Ingalls, Jones of Nevada, Logan, McMillan, Paddock, Patterson, Spencer, West, Windom, and Wright—25.

The PRESIDENT *pro tempore*. On this article 36 Senators vote "guilty," and 25 Senators vote "not guilty." Two-thirds not sustaining it, the respondent is acquitted on the fourth article. The next article will be read.

The Secretary read as follows:

ARTICLE V.

That one John S. Evans was, on the 10th day of October, in the year 1870, appointed by the said Belknap to maintain a trading establishment at Fort Sill, a military post on the frontier, not in the vicinity of any city or town, and said Belknap did, from that day continuously to the 2d day of March, 1876, permit said Evans to maintain the same; and said Belknap was induced to make said appointment by the influence and request of one Caleb P. Marsh; and said Evans paid to said Marsh, in consideration of such influence and request and in consideration that he should thereby induce said Belknap to make said appointment, divers large sums of money at various times, amounting to about $12,000 a year from the date of said appointment to the 25th day of March, 1872, and to about $6,000 a year thereafter until the 2d day of March, 1876, all which said Belknap well knew; yet said Belknap did, in consideration that he would permit said Evans to continue to maintain said trading establishment and in order that said payments might continue and be made by said Evans to said Marsh as aforesaid, corruptly receive from said Marsh, either to his, the said Belknap's, own use or to be paid over to the wife of said Belknap, divers large sums of money at various times, namely: the sum of $1,500 on or about the 2d day of November, 1870; the sum of $1,500 on or about the 17th day of January, 1871; the sum of $1,500 on or about the 18th day of April, 1871; the sum of $1,500 on or about the 25th day of July, 1871; the sum of $1,500 on or about the 10th day of November, 1871; the sum of $1,500 on or about the 15th day of January, 1872; the sum of $1,500 on or about the 13th day of June, 1872; the sum of $1,500 on or about the 22d day of November, 1872; the sum of $1,000 on or about the 28th day of April, 1873; the sum of $1,700 on or about the 16th day of June, 1873; the sum of $1,500 on or about the 4th day of November, 1873; the sum of $1,500 on or about the 22d day of January, 1874; the sum of $1,500 on or about the 10th day of April, 1874; the sum of $1,500 on or about the 9th day of October, 1874; the sum of $1,500 on or about the 24th day of May, 1875; the sum of $1,500 on or about

the 17th day of November, 1875; the sum of $750 on or about the 15th day of January, 1876; all of which acts and doings were while the said Belknap was Secretary of War of the United States, as aforesaid, and were a high misdemeanor in said office.

The PRESIDENT *pro tempore*. The Secretary will call the names.
The SECRETARY. Mr. ALCORN.
No response.
The SECRETARY. Mr. ALLISON.
Mr. ALLISON rose.
The PRESIDENT *pro tempore*. Mr. Senator ALLISON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. ALLISON. For reasons already assigned, I answer "not guilty."
The SECRETARY. Mr. ANTHONY.
Mr. ANTHONY rose.
The PRESIDENT *pro tempore*. Mr. Senator ANTHONY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. ANTHONY. For the reason already stated by me, believing that the respondent is not liable to impeachment, I answer "not guilty."
The SECRETARY. Mr. BARNUM.
No response.
The SECRETARY. Mr. BAYARD.
Mr. BAYARD rose.
The PRESIDENT *pro tempore*. Mr. Senator BAYARD, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. BAYARD. Guilty.
The SECRETARY. Mr. BOGY.
No response.
The SECRETARY. Mr. BOOTH.
Mr. BOOTH rose.
The PRESIDENT *pro tempore*. Mr. Senator BOOTH, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. BOOTH. Guilty.
The SECRETARY. Mr. BOUTWELL.
Mr. BOUTWELL rose.
The PRESIDENT *pro tempore*. Mr. Senator BOUTWELL, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. BOUTWELL. I say "not guilty," for reasons stated in connection with my vote on the first article.
The SECRETARY. Mr. BRUCE.
Mr. BRUCE rose.
The PRESIDENT *pro tempore*. Mr. Senator BRUCE, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. BRUCE. For want of jurisdiction, I answer "not guilty."
The SECRETARY. Mr. BURNSIDE.
No response.
The SECRETARY. Mr. CAMERON, of Pennsylvania.
Mr. CAMERON, of Pennsylvania, rose.
The PRESIDENT *pro tempore*. Mr. Senator CAMERON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. CAMERON, of Pennsylvania. Guilty.
The SECRETARY. Mr. CAMERON, of Wisconsin.
Mr. CAMERON, of Wisconsin, rose.
The PRESIDENT *pro tempore*. Mr. Senator CAMERON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. CAMERON, of Wisconsin. Not guilty for want of jurisdiction.
The SECRETARY. Mr. CHRISTIANCY.
Mr. CHRISTIANCY rose.
The PRESIDENT *pro tempore*. Mr. Senator CHRISTIANCY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. CHRISTIANCY. For reasons already given in relation to preceding articles, I answer "not guilty."
The SECRETARY. Mr. CLAYTON.
No response.
The SECRETARY. Mr. COCKRELL.
Mr. COCKRELL rose.
The PRESIDENT *pro tempore*. Mr. Senator COCKRELL, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. COCKRELL. Guilty.
The SECRETARY. Mr. CONKLING.
Mr. CONKLING rose.
The PRESIDENT *pro tempore*. Mr. Senator CONKLING, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. CONKLING. Joseph Story and every other commentator on the Constitution who has treated the question, as far as I know, having solemnly recorded their judgments against the legal possibility of trying private citizens by the political remedy of impeachment, I vote "not guilty" in order to follow them in holding this proceeding utterly void.
The SECRETARY. Mr. CONOVER.
Mr. CONOVER rose.
The PRESIDENT *pro tempore*. Mr. Senator CONOVER, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. CONOVER. Not guilty.
The SECRETARY. Mr. COOPER.
Mr. COOPER rose.
The PRESIDENT *pro tempore*. Mr. Senator COOPER, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. COOPER. Guilty.
The SECRETARY. Mr. CRAGIN.
Mr. CRAGIN rose.
The PRESIDENT *pro tempore*. Mr. Senator CRAGIN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. CRAGIN. Believing that I have no constitutional right to convict a man when the Constitution denies to me the right to try him, I vote "not guilty."
The SECRETARY. Mr. DAVIS.
Mr. DAVIS rose.
The PRESIDENT *pro tempore*. Mr. Senator DAVIS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. DAVIS. Guilty.
The SECRETARY. Mr. DAWES.
Mr. DAWES rose.
The PRESIDENT *pro tempore*. Mr. Senator DAWES, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. DAWES. Guilty.
The SECRETARY. Mr. DENNIS.
Mr. DENNIS rose.
The PRESIDENT *pro tempore*. Mr. Senator DENNIS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. DENNIS. Guilty.
The SECRETARY. Mr. DORSEY.
Mr. DORSEY rose.
The PRESIDENT *pro tempore*. Mr. Senator DORSEY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. DORSEY. For the reasons already assigned, "not guilty."
The SECRETARY. Mr. EATON.
Mr. EATON rose.
The PRESIDENT *pro tempore*. Mr. Senator EATON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. EATON. Not guilty. The same reasons apply to this article as applied to the former ones.
The SECRETARY. Mr. EDMUNDS.
Mr. EDMUNDS rose.
The PRESIDENT *pro tempore*. Mr. Senator EDMUNDS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. EDMUNDS. Guilty.
The SECRETARY. Mr. FERRY.
Mr. FERRY rose.
The PRESIDENT *pro tempore*. Mr. Senator FERRY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. FERRY. For the same reasons given in connection with the first article, I vote "not guilty."
The SECRETARY. Mr. FRELINGHUYSEN.
Mr. FRELINGHUYSEN rose.
The PRESIDENT *pro tempore*. Mr. Senator FRELINGHUYSEN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. FRELINGHUYSEN. For the same reasons I have already stated, "not guilty."
The SECRETARY. Mr. GOLDTHWAITE.
No response.
The SECRETARY. Mr. GORDON.
Mr. GORDON rose.
The PRESIDENT *pro tempore*. Mr. Senator GORDON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. GORDON. Guilty.
The SECRETARY. Mr. HAMILTON.
Mr. HAMILTON rose.
The PRESIDENT *pro tempore*. Mr. Senator HAMILTON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. HAMILTON. Guilty.
The SECRETARY. Mr. HAMLIN.
Mr. HAMLIN rose.
The PRESIDENT *pro tempore*. Mr. Senator HAMLIN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?

Mr. HAMLIN. For reasons heretofore given, "not guilty."
The SECRETARY. Mr. HARVEY.
Mr. HARVEY rose.
The PRESIDENT *pro tempore*. Mr. Senator HARVEY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. HARVEY. For the reasons stated in connection with my vote on the first article, I vote on this article "guilty."
The SECRETARY. Mr. HITCHCOCK.
Mr. HITCHCOCK rose.
The PRESIDENT *pro tempore*. Mr. Senator HITCHCOCK, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. HITCHCOCK. Guilty.
The SECRETARY. Mr. HOWE.
Mr. HOWE rose.
The PRESIDENT *pro tempore*. Mr. Senator HOWE, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. HOWE. Not guilty.
The SECRETARY. Mr. INGALLS.
Mr. INGALLS rose.
The PRESIDENT *pro tempore*. Mr. Senator INGALLS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. INGALLS. For the same reasons heretofore given, I vote "not guilty."
The SECRETARY. Mr. JOHNSTON.
No response.
The SECRETARY. Mr. JONES, of Florida.
No response.
The SECRETARY. Mr. JONES, of Nevada.
Mr. JONES, of Nevada, rose.
The PRESIDENT *pro tempore*. Mr. Senator JONES, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. JONES, of Nevada. Not guilty.
The SECRETARY. Mr. KELLY.
Mr. KELLY rose.
The PRESIDENT *pro tempore*. Mr. Senator KELLY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. KELLY. Guilty.
The SECRETARY. Mr. KERNAN.
Mr. KERNAN rose.
The PRESIDENT *pro tempore*. Mr. Senator KERNAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. KERNAN. Guilty.
The SECRETARY. Mr. KEY.
Mr. KEY rose.
The PRESIDENT *pro tempore*. Mr. Senator KEY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. KEY. Guilty.
The SECRETARY. Mr. LOGAN.
Mr. LOGAN rose.
The PRESIDENT *pro tempore*. Mr. Senator LOGAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. LOGAN. Mr. President, this being the first time in the history of this country that the power of the Senate of the United States to try impeachments has been attempted without law or precedent to be extended over any and all citizens of the United States who have ever held civil office, I deem it my duty, so far as I can, to put a check to this attempt to unlawfully exercise a power never delegated or intended to be by the Constitution of the United States to any legislative branch of the Government. Without passing upon the facts in this case, for want of authority to try the impeachment, and for the reasons heretofore given in connection with my other votes, I vote "not guilty."
The SECRETARY. Mr. MCCREERY.
Mr. MCCREERY rose.
The PRESIDENT *pro tempore*. Mr. Senator MCCREERY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. MCCREERY. Guilty.
The SECRETARY. Mr. MCDONALD.
Mr. MCDONALD rose.
The PRESIDENT *pro tempore*. Mr. Senator MCDONALD, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. MCDONALD. Guilty.
The SECRETARY. Mr. MCMILLAN.
Mr. MCMILLAN rose.
The PRESIDENT *pro tempore*. Mr. Senator MCMILLAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. MCMILLAN. Not guilty, for want of jurisdiction.
The SECRETARY. Mr. MAXEY.
Mr. MAXEY rose.
The PRESIDENT *pro tempore*. Mr. Senator MAXEY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. MAXEY. Guilty.
The SECRETARY. Mr. MERRIMON.
Mr. MERRIMON rose.
The PRESIDENT *pro tempore*. Mr. Senator MERRIMON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. MERRIMON. Guilty.
The SECRETARY. Mr. MITCHELL.
Mr. MITCHELL rose.
The PRESIDENT *pro tempore*. Mr. Senator MITCHELL, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. MITCHELL. Guilty.
The SECRETARY. Mr. MORRILL.
Mr. MORRILL rose.
The PRESIDENT *pro tempore*. Mr. Senator MORRILL, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. MORRILL. Guilty.
The SECRETARY. Mr. MORTON.
Mr. MORTON rose.
The PRESIDENT *pro tempore*. Mr. Senator MORTON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. MORTON. Guilty. I voted against jurisdiction when the question was raised by the plea in abatement. The question was properly raised and at the right time; and although it was decided adversely to my views, I regarded the decision of the Senate as settling the law of the case and as binding upon me. I recognize the right of a majority of the Senate to settle any question of law that properly arises during the pleadings or the trial in a case of impeachment.
The SECRETARY. Mr. NORWOOD.
Mr. NORWOOD rose.
The PRESIDENT *pro tempore*. Mr. Senator NORWOOD, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. NORWOOD. Guilty.
The SECRETARY. Mr. OGLESBY.
Mr. OGLESBY rose.
The PRESIDENT *pro tempore*. Mr. Senator OGLESBY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. OGLESBY. Guilty.
The SECRETARY. Mr. PADDOCK.
Mr. PADDOCK rose.
The PRESIDENT *pro tempore*. Mr. Senator PADDOCK, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. PADDOCK. Believing that neither the written words of the Constitution nor the spirit of our republican institutions warrant the impeachment of a private citizen, and that the accused was a private citizen when impeached, and further believing that the question of jurisdiction and the question of fact go hand in hand, always inseparable, to final judgment, without reference to the facts as charged in this article, I vote not guilty.
The SECRETARY. Mr. PATTERSON.
Mr. PATTERSON rose.
The PRESIDENT *pro tempore*. Mr. Senator PATTERSON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. PATTERSON. Not guilty.
The SECRETARY. Mr. RANDOLPH.
Mr. RANDOLPH rose.
The PRESIDENT *pro tempore*. Mr. Senator RANDOLPH, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. RANDOLPH. Guilty.
The SECRETARY. Mr. RAMSOM.
Mr. RANSOM rose.
The PRESIDENT *pro tempore*. Mr. Senator RANSOM, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. RANSOM. Guilty.
The SECRETARY. Mr. ROBERTSON.
Mr. ROBERTSON rose.
The PRESIDENT *pro tempore*. Mr. Senator ROBERTSON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. ROBERTSON. Guilty.
The SECRETARY. Mr. SARGENT.
Mr. SARGENT rose.
The PRESIDENT *pro tempore*. Mr. Senator SARGENT, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. SARGENT. Guilty.

The SECRETARY. Mr. SAULSBURY.
Mr. SAULSBURY rose.
The PRESIDENT *pro tempore*. Mr. Senator SAULSBURY, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. SAULSBURY. Guilty.
The SECRETARY. Mr. SHARON.
No response.
The SECRETARY. Mr. SHERMAN.
Mr. SHERMAN rose.
The PRESIDENT *pro tempore*. Mr. Senator SHERMAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. SHERMAN. Guilty.
The SECRETARY. Mr. SPENCER.
Mr. SPENCER rose.
The PRESIDENT *pro tempore*. Mr. Senator SPENCER, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. SPENCER. For reasons already stated, "not guilty."
The SECRETARY. Mr. STEVENSON.
Mr. STEVENSON rose.
The PRESIDENT *pro tempore*. Mr. Senator STEVENSON, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. STEVENSON. Guilty.
The SECRETARY. Mr. THURMAN.
Mr. THURMAN rose.
The PRESIDENT *pro tempore*. Mr. Senator THURMAN, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. THURMAN. Guilty.
The SECRETARY. Mr. WADLEIGH.
Mr. WADLEIGH rose.
The PRESIDENT *pro tempore*. Mr. Senator WADLEIGH, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article.
Mr. WADLEIGH. Guilty.
The SECRETARY. Mr. WALLACE.
Mr. WALLACE rose.
The PRESIDENT *pro tempore*. Mr. Senator WALLACE, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. WALLACE. Guilty.
The SECRETARY. Mr. WEST.
Mr. WEST rose.
The PRESIDENT *pro tempore*. Mr. Senator WEST, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article.
Mr. WEST. For the reasons assigned in connection with my first vote, I vote "not guilty."
The SECRETARY. Mr. WHYTE.
Mr. WHYTE rose.
The PRESIDENT *pro tempore*. Mr. Senator WHYTE, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. WHYTE. Guilty.
The SECRETARY. Mr. WINDOM.
Mr. WINDOM rose.
The PRESIDENT *pro tempore*. Mr. Senator WINDOM, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. WINDOM. For reasons already stated, I answer "not guilty."
The SECRETARY. Mr. WITHERS.
Mr. WITHERS rose.
The PRESIDENT *pro tempore*. Mr. Senator WITHERS, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. WITHERS. Guilty.
The SECRETARY. Mr. WRIGHT.
Mr. WRIGHT rose.
The PRESIDENT *pro tempore*. Mr. Senator WRIGHT, how say you? Is the respondent, William W. Belknap, guilty or not guilty of a high misdemeanor as charged in this article?
Mr. WRIGHT. This article charges the defendant with a high misdemeanor in office in that he did corruptly receive from one Marsh a large sum of money in consideration that he would permit one Evans to continue to maintain a trading establishment at Fort Sill. Before I can find the defendant guilty of this charge, I must believe that the testimony establishes it beyond a reasonable doubt. I do not find that it so establishes it, and I, therefore, vote "not guilty."
The names of those voting guilty and not guilty, respectively, were read, as follows:

GUILTY—Messrs. Bayard, Booth, Cameron of Pennsylvania, Cockrell, Cooper, Davis, Dawes, Dennis, Edmunds, Gordon, Hamilton, Harvey, Hitchcock, Kelly, Kernan, Key, McCreery, McDonald, Maxey, Merrimon, Mitchell, Morrill, Morton, Norwood, Oglesby, Randolph, Ransom, Robertson, Sargent, Saulsbury, Sherman, Stevenson, Thurman, Wadleigh, Wallace, Whyte, and Withers—37.
NOT GUILTY—Messrs. Allison, Anthony, Bontwell, Bruce, Cameron of Wisconsin, Christiancy, Conkling, Conover, Cragin, Dorsey, Eaton, Ferry, Frelinghuysen, Hamlin, Howe, Ingalls, Jones of Nevada, Logan, McMillan, Paddock, Patterson, Spencer, West, Windom, and Wright—25.

The PRESIDENT *pro tempore*. On this article 37 Senators vote "guilty," and 25 Senators vote "not guilty." Two-thirds of the Senators present not sustaining the fifth article, the respondent is acquitted on this article. This concludes the action of the Senate on all the articles of the impeachment. The Chair will call the Senate's attention to Rule 22, which provides:

And if the impeachment shall not upon any of the articles presented be sustained by the votes of two-thirds of the members present, a judgment of acquittal shall be entered.

If there be no objection to complying therewith, the Secretary will be directed to enter a judgment of acquittal. Is there objection? The Chair hears none, and it will be so entered.
Mr. EDMUNDS. I move that the Senate sitting for this trial adourn without day.
Mr. Manager LORD. Will the Senator withdraw his motion for a moment?
Mr. EDMUNDS. Yes, sir.
Mr. Manager LORD. Mr. President and Senators, we have the consent of the counsel for the respondent and desire the assent of the Senate to make a brief statement in regard to an allegation made by Judge Black in his last argument in this case. Judge HOAR, to whose brother reference was made, was not present at the time to make the correction; and, therefore, we think it is due to him as a manager, and but an act of justice to an eminent citizen of Massachusetts, (Hon. E. Rockwood Hoar,) that a statement by way of correction be made now so that it may be a part of the record of this trial; therefore, I request the Secretary to read a letter from Mr. Manager HOAR.
The PRESIDENT *pro tempore*. The Chair hears no objection, and the letter will be read.
The Secretary read as follows:

HOUSE OF REPRESENTATIVES,
July 29, 1876.

MY DEAR SIR: I was absent by leave of the House when Judge Black made his argument, and although I read the report of it in the papers I did not see or hear till about five minutes ago the following passage: "Judge Hoar, who gave the President a library of costly literature and law." Judge Hoar never gave or helped to give or had anything to do with giving to the President a library or any other thing of value during the life-time of either. Judge Black was doubtless himself deceived; but the whole story is an absolute falsehood without the slightest foundation.

I am yours, respectfully,
GEO. F. HOAR.

Hon. SCOTT LORD.

Mr. CARPENTER. In the absence of my colleague, Judge Black, I have given consent that this explanation shall be made, for I am certain that Judge Black would desire to have any mistake or misstatement in his argument corrected.
Mr. BOUTWELL. Mr. President, I ask the indulgence of the Senate sitting as a court to make a statement which affects the late Vice-President of the United States. It was my purpose to call attention to the circumstance, but I had thought until this moment that I might postpone it more properly until the session of the Senate. One of the honorable counsel, Mr. Black, in his argument, made this statement:

The manager from Massachusetts [Mr. HOAR] said, speaking of the Union Pacific Railroad, that every foot of that road had been founded in corruption and built with the wages of iniquity. That is true; and it is equally well known that the managers of that corrupt concern gave large amounts of their stock and bonds to the wife of a Senator who was afterward elected Vice-President. The wife received it with the full consent of the husband.

It is due not only to the reputation and memory of the late Vice-President in the State where he dwelt so long and which he represented so faithfully, but it is due to the great mass of his countrymen, who justly take an interest in his fame, that this statement should be corrected. The truth, as I believe, and always have believed since the circumstances to which this passage refers were brought to the attention of the public, is simply this: On the twenty-fifth anniversary of his marriage his friends gave his wife an amount of money—the precise amount I do not know, but it was not large—$3,800, I am informed. A portion of this Mr. Wilson, upon the advice of Mr. Oakes Ames, invested in stock, known as the Credit Mobilier stock. The stock was never conveyed to Mrs. Wilson, but a contract existed by which it was to be conveyed. After a time Mr. Wilson learned what turned out to be the exact facts in regard to that affair, or so far learned them that he came to the conclusion that it was not proper that she should hold this property, and it was sold, and sold at a loss, and that loss Mr. Wilson made up to his wife. At her death this property was bequeathed by her to (as I believe) a religious association or charitable institution. Mr. Wilson never derived any advantage from it; and what is particularly untrue is that either the corporation or any person representing the corporation made any gift or donation in any form of stocks or bonds or other property or valuable thing.
Mr. EDMUNDS. Mr. President, I move that the Senate sitting for this trial adjourn without day.
The motion was agreed to.
The PRESIDENT *pro tempore*, (at two o'clock and twenty-two minutes p. m.) The Senate sitting for the trial of the impeachment of William W. Belknap, late Secretary of War, stands adjourned without day.

OPINIONS

ON

FINAL JUDGMENT IN THE CASE OF THE IMPEACHMENT OF WILLIAM W. BELKNAP, LATE SECRETARY OF WAR.

The order of the Senate of July 31, 1876, allowed each Senator "within two days after the vote shall have been so taken" to file "his written opinion," under which the following opinions were filed:

Opinion of Mr. Norwood.

Mr. NORWOOD. The House of Representatives impeach William W. Belknap for the crime of bribery committed by him while holding the office of Secretary of War of the United States. The defendant has pleaded that while the charges may be true, yet impeachment did not commence until after he had resigned his commission as Secretary, and that, being at the date of impeachment only a private citizen of the United States and the State of Iowa, he is not liable to impeachment. Out of these pleadings springs a single issue: Does resignation of his commission protect a Federal civil officer from impeachment for bribery committed by him while in office?

I will not consume any time in considering the point made by the managers on the fraction of a day: first, because I regard the legal fiction as inapplicable to criminal law and dangerous to life and liberty if thus applied, and, second, because it is immaterial to the issue; for, if my conclusion be correct, the resignation has no effect whatever on the jurisdiction of the Senate; and this beings the only question. I proceed at once to consider it.

It is conceded by respondent's counsel that his resignation is the sole ground on which the plea to jurisdiction rests. In other words, it is admitted that, but for the resignation there would exist no valid objection to the jurisdiction of the Senate. This makes the question to be decided single and simple; and yet it has engendered a multitude of questions which have been discussed with great ardor and elaboration. Among them are whether a Senator or Representative can be impeached; whether one who commits treason, bribery, or other high crimes and misdemeanors, and afterward is appointed to a Federal office, can be impeached; whether a private citizen who has not held Federal office can be impeached for any offense; and whether officers of the Army and Navy are impeachable. All these questions are irrelevant. They are not before the Senate as a court, because not one of them is raised by the record. I intend, therefore, to eschew them entirely. The first duty of a judge is to decide the case before him, and his second duty is to decide no other. The only question, then, for the Senate to determine is whether a Federal civil officer who is confessedly liable to impeachment while he is in office can avoid impeachment by resignation. Respondent's counsel contend that he can; and on the following grounds:

First. The only power for impeaching Federal officials is conferred in and by the Federal Consititution and, being a delegated power, it must be strictly construed; and,

Second. As the Constitution does not expressly declare or contain words which imply that a person may be impeached after he is out of office, it therefore follows that the respondent, who is out of office, is not subject to the jurisdiction of the Senate.

Out of this brief syllogistic statement of the defense arise two questions: First, did the people import trial by impeachment into our Constitution, as it was understood in Great Britain, and, second, does impeachment in Great Britain lie against one who, having been a civil officer, is out of office? If these two questions admit of an affirmative answer, the re-spondent is subject to trial by the Senate.

All that the Constitution contains relating to impeachment is the following:

The House of Representatives * * * shall have the sole power of impeachment. (Article 1, section 2, clause 5.)

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law. (Article 1, section 3, clauses 6 and 7.)

The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. (Article 2, section 4.)

The President * * * shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. (Article 2, section 2.)

The trial of all crimes, except in cases of impeachment, shall be by jury. (Article 3, section 2, clause 3.)

To the foregoing extracts we are to look for all the light that the Constitution itself can afford us.

It is clear that the power of impeachment is conferred thereby on the House of Representatives. It is equally clear that the power to try all impeachments is granted to this body, and that the Senate, when trying a case of impeachment, is a court; for it has authority to try, to convict, and to sentence. The Senate is not only a court, but it is a court to try all cases of impeachment. It is not an admiralty or equity or common-law court, but it is a court differing in its nature, jurisdiction, procedure, constitution, powers, and purposes from all these courts. Its origin, history, nature, and object are all necessarily enveloped in the word "impeachment." The Constitution confers on the Federal courts admiralty and equity jurisdiction. It gives to the President the power of pardon. But it gives no definition of any one of these terms. That whole instrument contains but one definition of any word embraced in it, and that word is "treason." The Constitution does not define. It is not a glossary. It simply declares in terms so clear and pure that they may be classed as the richest jewels selected from all the wealth of our language and set in the chastest style. They are or were supposed to be so simple and unquestionable that the wayfaring man would understand them.

Where then do we look to find the meaning of admiralty, equity, common law, and pardon? We turn naturally and necessarily to the English law. This has been the course and practice of our courts ever since the Constitution was adopted. And as the Constitution is silent as to what we are to understand by "impeachment," where else ought we to turn or can we turn for its meaning, nature, purpose, and scope, except to the same source whence our language and the originals of our courts, their jurisdiction, and powers are derived?

If this be true, when we find the power of impeachment, without limit or qualification, given to the House of Representatives, by what process of reasoning can it be maintained that this power, as employed and understood in Great Britain, is abridged by our Constitution except by express terms? But the power of the House to impeach is in no particular abridged or qualified. Whatever powers are included in the term impeachment are granted to the House of Representatives, and we must therefore look to the nature, jurisdiction, and purposes of impeachment as practiced in Parliament to determine the nature, jurisdiction, and purposes of impeachment as understood in the Constitution.

The Constitution speaks of two modes of trial; the one by jury, the other by impeachment. It speaks of either as being perfectly understood by the people of the United States. No definition was required for either expression. They are treated as household words. And yet where do we turn to find out what "trial by jury" means? Is there any mystery about it? Have lawyers and judges ever wrangled over the meaning, the object, the nature, the scope of what Blackstone calls "trial by jury?" And why should the other mode of trial which is named in the Constitution with the same familiarity be the subject of such grave doubt? We can look nowhere else than to impeachment as understood and practiced in Parliament.

This must be so from necessity. For, on any other hypothesis, how could we possibly determine the extent of the power of impeachment? To decide the question by the lexicon would be as idle as to attempt to determine the jurisdiction and powers and procedure of the United States courts in cases in "admiralty" by looking for the meaning of that word in a dictionary.

It is necessary, in the next place, to see if impeachment as understood and practiced in Great Britain is qualified or abridged by express terms in the Constitution, and if so, then to determine whether such abridgment has deprived the Senate, as a court to try impeachment, of jurisdiction in the case under consideration. In other words, if the House of Commons could impeach, and the House of Lords could try, a person who had committed crime while in public office and had before impeachment resigned, has the Constitution either in terms or by necessary implication deprived the Senate of jurisdiction in such a case? That impeachment would lie in such a case in Parliament no one has or can deny. The cases of persons impeached and punished after resignation in Great Britain are numerous, and I need not stop to cite them. They have been cited often during the consideration of this question and the facts are indisputable. It is not insisted by any one that there is any express language in the Constitution which deprives the Senate of jurisdiction over a civil officer of the United States who after committing an impeachable crime has resigned. We must then see if in such a case there is any want of jurisdiction necessarily implied by any language in the Constitution. And this brings directly before us the only points relied on by the respondent in his plea to the jurisdiction.

He maintains through his counsel that this implication is contained in article 2, section 4, of the Constitution, which for convenience I will repeat:

*

The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

This language, it is insisted, necessarily implies that the person impeached must be in office, because he cannot be removed from office unless he be in office. The reason given for the assumption is strictly true, and the argument would be good if the sole object of impeachment was to remove an offender from office. But just here is to be found the fallacy, the sophistry, in the argument. It has to assume as true that which is false in order to make its conclusion appear to be sound, for it assumes that removal is the only purpose of impeachment. Were this section the only one in the Constitution—that is, if clauses 6 and 7, section 3, article 1, were not in the Constitution—the argument would be plausible, and only plausible. But when we take all these sections together and construe them as a whole, we find the conclusion of the respondent in direct conflict with the language in

article 1, section 3. For by the latter we find that removal is not the sole object of impeachment. It is not the limit of the judgment. It is but a small portion of the penalty that may be inflicted. The people not only declared that a Federal civil officer, a President or Vice-President, *shall be removed* on conviction, but they declared he might be forever thereafter disqualified from holding any office of honor, trust, or profit under the United States. In construing statutes and written constitutions it is the solemn duty of courts to harmonize any apparently conflicting portions, and not to place a construction on one part that will annul any other, if it is possible to avoid such construction. To construe section 4, article 2, as respondent's counsel do is to make void or ineffectual a portion of section 3, article 1. To say that removal is the sole object of impeachment, is to say that the clause which provides for disqualification is nugatory or void. Again, to say that impeachment will not lie unless the offender be in office, is to say that disqualification can never be adjudged unless the accused will consent.

To say that the consent of an offender to impeachment and removal and disqualification is necessary to jurisdiction, is to declare that the Senate of the United States sitting as a court of impeachment is the only court in Christendom whose jurisdiction, in a criminal case, depends on the volition of the accused. To say that removal is a condition-precedent to disqualification, is to make the consent of every offender in Federal office a condition precedent to impeachment; for he may or may not be impeached, as he may or may not choose to resign.

An attempt has been made to evade the conclusion that disqualification may be adjudged without removal, by a resort to grammatical construction. It is said the words "judgment * * * shall not extend further than to removal and disqualification to hold and enjoy any office" necessarily mean that removal must precede disqualification and be a part of the judgment. This, if true, would lead to a sequence which no one can sanction. It is, that disqualification must necessarily follow removal. For if, as is contended, the conjunction "and" between the words "removal" and "disqualification" makes the two penalties parts of an indivisible judgment, then *disqualification* must be adjudged whenever *removal* is. This would lead to this absurd, harsh, cruel, and unjust consequence: that a judge who was unfit for his place by reason of intoxication, when impeached, *must be disqualified forever* from holding any other Federal office. He could not be removed without being also disqualified.

Respondent contends that section 4, article 2, is a limitation as to offenders and offenses; that no one except the officers therein enumerated can be impeached, and only for the crimes therein stated; and that only *officers*—that is, persons actually holding commissions—can be impeached. And, as the logic of this position necessarily demanded, his counsel went to the extremity of maintaining that after impeachment, and at any moment before conviction, the officer could drop his commission from his hand and escape judgment of removal and disqualification and any and all other possible penalty.

If this be true, it would seem that the people of the United States, instead of devising a wise and certain and speedy method of getting rid of public offenders and remaining rid of them and making examples of them as a terror to evil-doers in high places, were engaged in a game of thimble-rigging with the most dangerous of all criminals and permitting the criminals to play the game. They were careful to see that ordinary criminals should not escape punishment by evading the courts through their own volition, but they intentionally offered immunity to state offenders by telling them they cannot be impeached unless they consent. Is this a reasonable construction of section 4, article 2? On the contrary, it is the most strained and unwise construction that could possibly be put upon it. The reasonable view of all these provisions taken together is that section 4, article 2, simply declares and commands that when the President, Vice-President, and all civil officers, &c., are convicted on impeachment, *they shall be removed*. They shall not receive any less penalty or sentence.

The wise and patriotic men who framed the Constitution did not intend to deal thus lightly with high offenders. They had seen to what depths of degradation and extremities of danger the government of Great Britain had been carried and sunk by official corruption. They had seen public offices sold for a price. They had seen ministers of the Crown buying legislation as brokers buy stocks in the open market. They had seen much more of like character which I have not time to even capitulate, and they knew that the only sure and speedy remedy for an evil so great and dangerous to the state is by impeachment. The danger of executive power and its insidious advances were known by them, and whether they intended to dally with or rather to encourage such enormity, we can easily judge by a careful study of the few words they uttered on this subject. They provided that the higher the offender, the greater should be his punishment; for in addition to inflicting on an officer the usual penalty visited upon criminals in private life, they provided that he should be carried by the chosen representatives of the people to the loftiest station in the government he had dishonored, there to be publicly branded in the forehead as unworthy of the confidence of his people and then to be turned loose a wanderer, a by-word, and a hissing among, but to be not of, his fellowmen. To make the proceeding most signal and the penalty most exemplary, they declared that for those high offenses he should not be entitled, as of right, to trial by jury:

> The trial of all *crimes, except in cases of impeachment*, shall be by jury. (Article 4, section 2, clause 3.)

And that he should wear his disgrace and shame and outlawry to the end of his days, they declared that after conviction no pardon, no reprieve even, could ever reach him. In the face of all this, it is gravely insisted that impeachment has no object but removal from office; that when the offender is out of office justice is appeased and the right arm of the law is paralyzed; and that it matters not whether the office be vacated by self-amotion, or by judgment of this court, or by executive order, the result is the same to the law and the people. The offender is removed, out of office, and cannot be disqualified, cannot be impeached, even though as President of the United States he had committed treason! This may be law, but it is certainly shocking to common sense.

The cardinal mistake made by those who oppose jurisdiction in this case is, that the power of impeachment must be strictly construed for the benefit of the people; that being a delegated power, nothing can be taken except what is expressly and literally granted. In my opinion, this is a strange reading of the Constitution, and tends to oppress the people and destroy their rights. Those who oppose jurisdiction treat impeachment by Parliament as if it were a power of the Crown—a prerogative of the king. They cite its abuse and conceal its use. They refuse to see that it is a *right and a power of the people* to be brought into action at their will on great occasions and to reach enormous public crime. The horrors of power abused in Great Britain are paraded to chill the blood, and the power of impeachment is depicted as the greatest oppression of the English people. This is a perversion of history. The House of Commons alone can impeach and they are the immediate representatives of the people, and this power has always been put in action to protect some right of the people, either infringed, or supposed to be infringed, by some one in office. Was the danger or the oppression of impeachment one of the evils from which our fathers fled to the New World? Was it one of the causes which moved them to rebel in 1776? Is this gigantic power of omnipotent Parliament enumerated or even referred to by them in their immortal bill of complaints? Nay, quite the contrary.

Our rebel fathers made no complaints against English law. They did not condemn impeachment. They said nothing of danger to the people by abuse of the arbitrary power of Parliament in trials by impeachment. On the contrary, the Declaration of Independence is the noblest eulogy on British law to be found in the English language. Every paragraph is a protest against the king and his servile tools for the abuse of law. They were content with the law, but rebellions against those appointed to administer the law. And when the seven-years struggle was over, they attested their admiration for and satisfaction with the laws of the kingdom against which they had rebelled, by incorporating the common law and the law of impeachment into their respective State constitutions. The State of Georgia adopted by ordinance the common law of Great Britain in gross, and such of her statute law as was adapted to her form and spirit of government, and invested her Legislature with the power of impeachment without any other definition than the word itself brought with it from its residence in Parliament. And when afterward, in 1787, the same people who had made trial by impeachment a part of the organic law of their several States adopted the Federal Constitution, they again collectively attested their purpose not to abandon this sacred right of defense against executive power, by imbedding it in that instrument. This they did when the most memorable trial by impeachment in all history—that of Warren Hastings—was in progress. He had laid aside his commission as governor-general of India, was a private subject of the Crown, though princely in the rich spoils of the East. With this notable instance of the power of Parliament exerted against a private subject and with many more of anterior date known to them, those wise statesmen, jealous of personal liberty and private property and the pursuit of happiness, ingrafted impeachment on the Constitution.

They were familiar with all English history and knew all the abuses of power as well as we do. They knew that the struggle for human freedom has always been in all ages and all countries between rulers and the ruled, between the many out of office and the few in office, between subjects and the king, and that this warfare had continued almost without cessation in Great Britain for a thousand years. They knew that executive power is ever aggressive on the rights of the people, and that impeachment in Parliament was the speediest and most effectual means of deliverance. And, finally, they knew that impeachment was one of the dearest rights of a free people, one of the strongest safeguards against corrupt government, and with a full knowledge of what crimes had been committed by an omnipotent Parliament, when, at long intervals, the people acting through the Commons, solemnly determined that "the awful discretion" inherent to impeachment was alone commensurate to and sufficient for official crime, and with a like knowledge of the necessity for such protection for the people against official corruption, the people of the United States determined that this right should be as secure and lasting as the Constitution itself. They constructed it as a fortress of defense against the Federal Executive. They intended it to be in the nature of a reserved right, for unless it had been provided for in the Constitution it is clear that the Executive of the Government would have been placed beyond the power of removal or disqualification, and the people would have been unable to reach official

corruption except through the elective franchise, or to punish official criminals except by trial by jury. And they hold it in reserve to be used, as Hercules used the river Peneus, in cleaning the incrusted corruption of Federal office when all other means may prove unavailing.

And what is impeachment as it stands in the Constitution? With all the light of its history in England to guide them, with their knowledge that impeachment is to protect the people, and not to favor officers, and having committed its employment to their immediate representatives, what limit did they set, if any, on the impeachment in Parliament at which they were looking when they adopted it into our organic law? If they had said Congress shall have the sole power of pardon and stopped, who would say they had set any limit to it? If they had given that power to Congress, except in cases of conviction on impeachment, who would say that any limit was set to the power except in the single instance of conviction on impeachment? So, if the sole power to impeach and the power to try all impeachments had been all on the subject, who would maintain that all power of impeachment, as understood and practiced in Great Britain, had not been conferred?

But, after conferring the power on the House to impeach without limitation, and the Senate to try all impeachments, they set certain limits so as to modify and curtail the power as exercised in Parliament. Let us see what those limits are.

First. Parliament has unlimited control, and on conviction can inflict any imaginable and capricious punishment. It can hang, draw, quarter, banish, imprison, fine, sequester, remove, disqualify, and all this and more, by its own sentence. But in this our Constitution has made two great changes.

First. It divides the jurisdiction for punishment between the Senate and the common-law courts. It takes away the discretionary power of Parliament to punish, which was and is so terrible. It limits the power of the Senate to removal or disqualification, or to the infliction of any sentence of less consequence than removal or disqualification. And it takes away all discretion as to any other punishment by saying that such punishment shall be inflicted according to law. Thus the jurisdiction of Parliament is divided between the Senate and the courts; but the discretion of Parliament is taken away from the Senfte and the punishment made certain. The offender knows the most he may receive on conviction before either the Senate or the courts.

Second. They limited the danger to the accused by requiring the concurrence of two-thirds of the Senators present to convict, whereas a majority only was sufficient in the House of Lords.

Third. They limited the disqualification to hold office to any office under the United States, and thus left the party convicted still qualified to hold office under any State.

Fourth. They limited the right of the Vice-President to preside over the Senate by placing the Chief Justice in his seat when the President is tried; thus showing their purpose to insure justice to the accused by debarring ambition from the court of impeachment.

As the power of impeachment would have been as general as that of the British Parliament, had it not been restricted, it must follow that the defendant in this case must show that the restrictions named in the Constitution cover and protect him. He must show either that the jurisdiction of impeachment by Parliament does not extend to one out of office by resignation, or that our Constitution limits jurisdiction to those in office. The former he cannot show. The law, the precedents, and practice are all against that theory. Are there any words in the Constitution which will bear this construction? It is not pretended that there are any words expressly so declaring.

Let us not forget that impeachment is intended to purify the state, to rid the Government of corruption in high places, and in no sense to favor offenders, and that the only mercy intended to be shown to the guilty has been provided for by the express limitations named above, to wit, that two-thirds should convict, and that judgment shall not extend beyond removal and disqualification. Let us not forget that our fathers labored to protect the people, for they knew that those in power need no protection.

At this late day shall their children declare that their labor was in vain; that their declaration of the power of impeachment is an idle threat; that they left the word impeachment undefined and indefinable; that they equivocated with criminals by employing such doubtful words as to invite them to seek safety by resigning their commissions; that they left the people no protection against high crimes and misdemeanors except by the enactment of a penal code, which would perpetually tax the ingenuity of man to frame in order to meet the innumerable methods which the counter-ingenuity of corrupt officials can devise in committing acts dangerous to the state and the safety and liberty of the people; that a President who has levied war against his country can hold his seat, witnessing his trial by impeachment with indifference, and just at the moment of conviction announce his resignation and avoid any and all visitation except such as might be inflicted on the private citizen who had joined in his treason? Shall we, by thus construing the Constitution, encourage corruption in high places? For one I will not, and for the reasons I have given I hold that the Senate has jurisdiction to try the respondent.

I am of opinion, further, that the allegations made in the five several articles of impeachment have been sustained by the evidence, and that the respondent is guilty of each and all of the charges.

Opinion of Mr. Stevenson.

Mr. STEVENSON. Mr. President, I desire very briefly to state my opinion on the pending preliminary question and the grounds upon which it rests.

William W. Belknap was impeached by the House of Representatives on the 2d day of March, 1876, for alleged bribery and corruption charged to have been committed by him while Secretary of War.

The resolution for his impeachment was passed upon the recommendation of a regular committee of the House, after a thorough investigation of the charges and the examination of several witnesses in support of their truth, at which Belknap was present and of which he had due notice.

Upon the day of his impeachment, at ten o'clock and twenty minutes, after the report of the committee had been agreed upon, but before the meeting of the House, the respondent resigned the office of Secretary of War, which was immediately accepted by the President of the United States. The House of Representatives subsequently appointed its managers and laid before the Senate articles of impeachment, which set out with great precision the time, place, and circumstances under which the specific acts of bribery and corruption are charged to have been committed.

The respondent appears in person and by counsel. He does not deny the commission of the alleged offenses nor that they were impeachable crimes. He pleads that at and before the passage of the resolution for his impeachment he was not Secretary of War, and neither then nor at any time since has he held any official position under the Government of the United States, and he therefore denies the jurisdiction of this court.

To this plea the House of Representatives filed two replications:

The first, traversing the facts of the plea by way of demurrer.

The second, a special replication, setting up certain facts tending to impugn the validity of the resignation of the accused and going to show that it was not made in good faith.

Respondent rejoined, demurring to the second replication of the House of Representatives; and for further rejoinder denies the truth of the facts set up in the second replication and relies upon others in avoidance of the charge that his resignation was colorable. To this rejoinder there was a surrejoinder.

The conclusion which I have reached renders it wholly unnecessary for me to consider the question of fact presented by the replication or the rejoinder.

Assuming as I do, that the resignation of the accused was a legally accomplished fact before the resolution for his impeachment was passed, the question occurs: What legal effect did the voluntary resignation of the respondent have upon the constitutional power of the House to impeach or upon that of the Senate to try said impeachment?

This is a simple question of law; one, wholly of first impression, unsupported by precedent or direct authority; its solution lies, as I conceive, in an extremely narrow compass. The importance of its right adjudication cannot however be overstated either in its personal effect upon the accused, or in its far wider influence as a valid and binding construction of the Constitution, upon the safety, rights, and interests of the whole people of the United States, in whose name this impeachment was instituted and on whose behalf it is now being prosecuted.

The jurisdictional power of this court rests upon the proper construction of a few provisions of the Constitution, which it is better that I should group together and quote literally, in the order in which they are found in that instrument.

The Constitution, article 1, section 2, declares that—

> The House of Representatives * * * shall have the sole power of impeachment

The sixth clause of the third section of article 1 declares:

> The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.
>
> Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

By section 4, article 2, the Constitution provides:

> The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

The third clause of section 2, article 3, provides that—

> The trial of all crimes, except in cases of impeachment, shall be by jury.

The latter part of clause 1, section 2, article 2, declares:

> The President * * * shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

The clauses quoted contain every provision upon the subject of impeachment which is to be found in the Constitution.

That instrument created a free government of limited and enumerated powers. Within the scope of its delegated authority, the Constitution and the enactments made in pursuance thereof, become the supreme law of the land. The Government acts alike upon the individual members of the body-politic, not less than upon the varied classes of officials who constitute its organization.

The power requisite to enforce obedience to its lawful mandates not less than the means to prevent any violation of its express provisions were absolutely essential to its permanence and preserva-

tion. Without such remedies the Government would have been as impotent to enforce the duties which it created as it would have been powerless to preserve the rights, public and private, which it had been ordained to protect. If any fact touching the Constitution is clearly incontrovertible, it is, that the convention which framed it intended to deprive all officials, from the highest to the lowest, of all opportunity to violate their official trust, to enlarge their duties, or in any way to encroach upon the liberties of the citizen.

These wise men were fully versed in English history. They well knew, that the perpetuity of the Government about to be inaugurated might be as much endangered by corruption and venal prostitution of patronage to selfish and ignoble ends, as from the more open and daring attempts of unlicensed power for its overthrow and subversion.

It devolves on this court so to construe the Constitution in this case, as shall harmonize all its provisions, and best secure and effectuate the great objects sought to be achieved by the statesmen who framed and the people who adopted it.

It is argued by the counsel for the accused and by Senators who concur with them, that the Constitution delegates no express power of impeachment, but that all the authority of the House, or of the Senate over this subject arises by legal implication from section 4, article 2, of the Constitution.

That declares—

> The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

The advocates of this construction propose to transpose this last-cited section from the second article of the Constitution, creating the executive department of the Government, to the first article of that instrument, creating the legislative department and containing the various delegations of express and implied power to Congress. The admitted necessity of such a transposition is a strong argument against the construction that looks to it for support. Upon this precise point, an eminent judge of the Supreme Court of the United States, when, in an argument many years ago of a constitutional question before that court a similar transposition of a clause of the Constitution was proposed in order to support a particular construction of that instrument, said—

> That the derangement of the words or even sentences of a law may sometimes be tolerated in order to arrive at the meaning of the Legislature. But it is a hazardous rule to adopt in the construction of an instrument so maturely considered as the Constitution was by enlightened statesmen who framed it, and was so severely examined and criticised by its several parts in the various State conventions which finally adopted it. (Ogden *vs.* Saunders, 12 Wheaton's Reports, page 267.)

This fourth section of article 2 contains nothing upon which jurisdictional power can be implied. It does not in any way refer to the power of impeachment. It fails to declare that any officer or class of officers may or may not be impeached in or out of office. So far from any legal implication of jurisdictional power to impeach, this section directly recognizes that judicial procedure as already established in the Constitution. I know of no rule of construction which would justify the implication of a power from any section in the Constitution which recognized that power as already exisiting by express grant.

If the framers of the Constitution, acquainted as they were with the historical and legal meaning of impeachment, personal witnesses too of its exercise as a parliamentary accusation and trial of guilty officials in England for many years, with its attendant abuses, determined to incorporate this great remedial process into the Constitution of the United States, it would have been a remarkable oversight had they failed to guard its exercise with ample and full jurisdictional power. These enlightened guardians of popular rights could never have consented to leave so important a sanction of the Constitution unguarded. Accordingly, the fifth clause of section 2, article 1, already quoted, provides:

> The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

The third section of article 1 provides:

> The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.
>
> The Senate shall have *the sole power to try all impeachments.*

These two sections would seem to allow no room for doubt as to their true meaning and exact intendment. They are clear, direct, and simple. The grant of power in each is as absolute, plain, and as exclusive, as words can express or sovereign power bestow.

It is claimed that the Constitution fails to define impeachment or what are impeachable crimes, or to enumerate the persons subject to be impeached. Consequently, that the two sections of article 1 of the Constitution last cited, must be construed, not as grants of express power either to the House or to the Senate, but as merely descriptive of a power and distributive of its exercise to the two Houses of Congress.

But this argument clearly rests on a false premise.

It is true that the Constitution does not define impeachment, or impeachable crimes, nor does it designate the persons liable to impeachment. But I am unable to perceive how a failure to define any term in the Constitution could weaken, much less destroy, any express grant of power in that instrument. This argument, if carried to its legitimate sequence, would tend to overthrow all the express grants of power in the Constitution. *Habeas corpus* is guarded from suspension in the Constitution, but it is not defined. The efficacy of that great writ, for so many centuries the safeguard of individual liberty everywhere, is not now to be weakened for want of a constitutional definition. So, too, of the privilege of jury trial. Although incorporated into the organic law of the Federal Union, it fails to define the number of which the jury is to be composed, or to prescribe what unanimity is required for a verdict. Again:

> The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

There is no definition of attaint or corruption of blood in the Constitution, and yet no one denies the express grant of power in that clause. Here as in many other like phrases we must look to the common law of England, from which, both *habeas corpus* and jury trial and the treason clause have been borrowed.

So, too, the Constitution declares, that the judicial power shall extend to all cases in "law and equity" arising under the Constitution, &c. But we must look beyond the Constitution for the distinction between cases in law and equity. Every lawyer knows that although the courts of the United States derive their jurisdiction from the Constitution and laws of the United States, yet that they look to the great chancery system of England as the limit of their jurisdiction. So with impeachment. Borrowed evidently from the English constitution in its general features, this remedial process was incorporated into the Constitution as a guarantee against corruption, official infidelity, and force. It was not to punish crime.. The founders of the Government guarded its exercise, not by definition or enumeration, but in stronger restrictions in confining its jurisdiction to official guilt and in limiting its penalties to removal from and future disqualification to hold office.

Thus remodeled, and adopting the rule, that the Constitution shall always be so construed as to render it on all occasions the effective agency of accomplishing the objects and ends designed by its framers, impeachment remains here, as recognized in the parliamentary law and usage of England at and prior to the adoption of the Constitution of the United States. No definition of it was necessary. Its founders looking to the English constitution and parliamentary law; to the many memorable impeachment trials commencing with that of Lyons, instituted by the Commons before the Lords in 1376; looking also to the constitution and usage of the American States prior to 1787, saw that no act of Parliament, or of any American State Legislature had ever defined an impeachable crime. It might have been difficult and dangerous to have done so. Greater safeguards were found in *making the House of Representatives* the sole organ to institute, and *the Senate* the sole tribunal to try all impeachments, and in limiting the judgment to removal from, and future disqualification to hold office. This restriction upon the judgment, expressly confines the jurisdiction of American impeachment to official corruption, malfeasance, misfeasance, or nonfeasance committed in office. Whenever the House of Representatives believe that the public safety demands the impeachment of some faithless or corrupt official, the Constitution has delegated full and exclusive power to institute the proceeding. When thus instituted, the Senate is clothed with judicial and exclusive power to try all impeachments thus inaugurated by the House. Where the Constitution is silent, this court can and should look to parliamentary law, and parliamentary usage, as the Supreme Court of the United States looks to the maxims and doctrines of the great system of English chancery for aid in judicial investigation, and oftentimes, to ascertain the limit of its own jurisdiction. When words, or legal phrases are copied into the Constitution of the United States from the civil law, the common law, or the British constitutional and parliamentary law, they are always interpreted by the law from which they are borrowed. Indeed, when foreign statutes are adopted into our legis' .ion the known and settled construction of those statutes by courts of law has been considered as silently incorporated into the acts. (Story on Constitution, pages 796, 797, 800; Rawle on Constitution, page 200; Sedgwick on Statutes, pages 262, 426.)

I am therefore persuaded that the second and third sections of article 1 of the Constitution invest the House and Senate with express and exclusive power to institute and try all impeachments for official crime, and that the authority thus conferred upon this court, empowers it when the Constitution is silent, always to look to the parliamentary law and parliamentary usage of England for the scope and limit of its jurisdiction and authoritatively to decide what that limit is.

Nor is it true as has been argued, that this power of the court to look beyond the Constitution to the parliamentary law for the limit of its power, would invest this court with common-law jurisdiction. The argument is unsound alike in theory and in fact. This court looks to the parliamentary law, which is wholly distinct from the common law of England, although often loosely confounded with it by Mr. Rawle and other law-writers in treating of impeachment. But to look to foreign courts, or to foreign laws for light and aid in the interpretation of judicial procedure borrowed from them, is by no means to look to them for jurisdiction. That is derived from the Constitution as already shown, which is the exclusive source of power. Jurisdiction is one thing; its scope and limit is another; and that argument is still more fallacious, that because we do often look and are required

by the language of the Constitution to look to the common law for light, that therefore, the courts of the United States would, *eo instanti*, become invested with common-law jurisdiction over common-law crimes and offenses.

The whole jurisdiction of the United States courts over criminal offenses is derived from the acts of Congress. They have no common-law jurisdiction. Yet the Constitution declares—

That no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

If the courts are thus required by the words of the Constitution to look to the common law, as the sole guide for its action, without conferring upon such courts common-law jurisdiction, why may not this high court of impeachment look to the parliamentary law for the scope and extent of its jurisdictional power, where the Constitution is silent?

That the United States courts do not acquire common-law jurisdiction I propose now to show by a quotation from the commentary of an able jurist, St. George Tucker—*nomen venerabile clarum*—upon the clause of the Constitution last quoted. He says:

We may be told the common law is evidently here referred to as the law of the land. This is not the case; it is referred to as a known law; and might in strictness have been referred to as the law of the several States, so far as their constitutions and legislative codes, respectively, have admitted or adopted it. Will any man who knows anything of the laws of England affirm, that the civil or Roman imperial law, is the general law of the land in England, because many of its maxims and its course of proceedings are generally admitted and established in the high court of chancery, which is the highest court of civil jurisdiction, except the Parliament, in the kingdom? Or that the canon, or Roman ecclesiastical law is the general law of the land, because marriages are solemnized according to its rites, or because simony, which is an ecclesiastical offense, is also made an offense by statute?

* * * * * * *

We may fairly infer from all that has been said that the common law of England stands precisely upon the same footing in the Federal Government, and courts of the United States, as such, as the civil and ecclesiastical laws stand upon in England: That is to say, its maxims and rules of proceeding are to be adhered to, whenever the written law is silent, in cases of a similar or analogous nature, the cognizance whereof is by the Constitution vested in the Federal courts; it may govern and direct the course of proceeding in such cases, but cannot give jurisdiction in *any case*, where jurisdiction is not expressly given by the Constitution. The same may be said of the civil law; the rules of proceeding in which, whenever the written law is silent, are to be observed in cases of equity, and of admiralty, and maritime jurisdiction. In short, as the matters cognizable in the Federal courts belong (as we have before shown in reviewing the powers of the judiciary department) partly to the law of nations; partly to the common law of England; partly to the civil law; partly to the maritime law, comprehending the laws of Oleron and Rhodes; and partly to the general law and custom of merchants; and partly to the municipal laws of any foreign nation or of any State in the Union, where the cause of action may happen to arise, or where the suit may be instituted; so, the law of nations, the common law of England, the civil law, the law maritime, the law merchant, or the *lex loci*, or law of the foreign nation, or state, in which the cause of action may arise or shall be decided, must in their turn be resorted to as the rule of decision, according to the nature and circumstances of each case respectively. So that each of these laws may be regarded, so far as they apply to such cases, respectively, as the law of the land. But to infer from hence, that the common law of England is the general law of the United States, is to the full as absurd as to suppose that the laws of Russia, or Germany, are the general law of the land, because in a controversy respecting a contract made in either of those empires it might be necessary to refer to the laws of either of them, to decide the question between the litigant parties. Nor can I find any more reason for admitting the penal code of England to be in force in the United States (except so far as the States, respectively, may have adopted it, within their several jurisdictions) than for admitting that of the Roman empire, or of Russia, Spain, or any other nation whatever. (Tucker's Appendix to first volume Blackstone, pages 428, 429.

The Constitution, section 4, article 2, makes it imperative, that when "the President, Vice-President, and all civil officers of the United States are convicted of treason, bribery, or other high crimes and misdemeanors, they shall be removed from office." But neither the Constitution nor has any United States statute in any manner defined any offenses, except treason and bribery, to be "high crimes and misdemeanors," and as such impeachable. How, then, are high crimes and misdemeanors to be ascertained? Is the silence of the statute-book to be deemed conclusive in favor of the guilty party, until Congress shall have made a legislative declaration and enunciation of the offenses, which shall be deemed "high crimes and misdemeanors?" If so, the power of impeachment, except as to two expressed cases, is a complete nullity; and the party is wholly dispunishable, however enormous may be his criminality. (Story on Constitution, § 796; Rawle on Constitution, page 273.)

Here, therefore, the very clause of the Constitution, relied on, as the only source of implied jurisdictional power, becomes a rope of sand, unless we look beyond the Constitution, to the parliamentary law, to see what "high crimes and misdemeanors," are technically understood to mean.

"High crimes and misdemeanors" are the words of the British constitution which describe impeachable conduct. (4 Hatsell's Precedents; 18 American Law Register, page 645.)

The word "high" applies as well to misdemeanors as to crimes. (2 Chase's Trial, 383.) Whatever "high crimes and misdemeanors," were the subjects of impeachment in England, prior to the adoption of our Constitution, are subjects of impeachment before this court, subject only to the limitations and restrictions imposed by the Constitution of the United States.

We have clearly a right to look to the parliamentary law and usage of England for the sphere and limit of our jurisdictional power over impeachment. When we do so, the authorities are abundant to show, that the phrase, "high crimes and misdemeanors," when used in prosecution, by impeachment, has no definite signification, and are never limited to crimes defined by statute, or, as recognized at common law. This view of the Constitution is fully established by the impeachments of Pickering, Chase, and Peck. Alexander Hamilton says that—

Several of the State constitutions have followed the example of Great Britain, and up to that time the State constitutions had adopted the British system with only some modifications; but none of them recognizing the idea that impeachment was limited to indictable acts, but all affirming that the subjects of this jurisdiction were offenses of a political nature.—*Federalist*, No. 65.

But it is wholly immaterial whether the fourth section of article 2, of the Constitution, limits the jurisdiction to offenses declared criminal by statutes of the United States, or whether the jurisdictional power of impeachment, conferred by the Constitution, be express or implied. Every court should confine itself to the precise question which it is called upon to decide. Beyond that, its ruling is said to be *obiter dictum*.

It is not denied, that W. W. Belknap was until ten o'clock and twenty minutes on March 2, 1876, a civil officer of the United States; that the offenses charged to have been committed by him were declared crimes by the statutes of the United States; and if committed, were committed by him while discharging the duties of Secretary of War. None questions the fact, that prior to his resignation the House of Representatives, as the grand inquest of the nation, and the Senate of the United States, as the high court to try all impeachments, had full and sole jurisdiction over this cause.

The question occurs, How has this admitted jurisdiction been lost? Those who deny it, insist, that the fourth section article 2 of the Federal Constitution commands, that "all civil officers" of the United States, impeached and convicted of treason, bribery, and high crimes and misdemeanor shall be removed from office. They say, Belknap was by his resignation out of office, and not a civil officer, when the resolution for his impeachment passed the House, and consequently, not within the description; secondly, that judgment of removal from office on conviction is imperative. But removal from an office already vacated, is impossible, and as the court cannot execute its judgment, therefore, it is without jurisdiction. This argument rests on the assumption, that legal responsibility for impeachable crimes attaches to the guilty official, not at the time the offense is committed, but at the moment when the accusation is officially preferred. No authority has been cited in its support, and it is in direct violation of all established rules of construction of criminal law in England or in the United States. Responsibility, always, attaches at the moment of the commission of the offense. The Revised Statutes of the United States, for the prevention of official venality and corruption, and under which the respondent himself has been already indicted in the criminal court in this District, provides:

Every officer of the United States, and every person, acting for or on behalf of the United States, in any official capacity under, or by virtue of the authority of any Department, or office of the Government thereof; and every officer, or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, who asks, accepts, or receives any money, or any contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision, or action on any question, matter, cause, or proceeding which may at any time be pending, or which may be by law brought before him in his official capacity, or in his place of trust, or profit influenced thereby, * * * shall be punished by a fine not more than three times the amount asked, accepted, or received, and by imprisonment not more than three years.

Every member, officer, or person convicted under the provisions of the two preceding sections, who holds any place of profit, or trust, shall forfeit his office or place, and shall thereafter be forever disqualified from holding any office of honor, trust, or profit under the United States. (Revised Statutes, sections 5500, 5501, and 5502.)

The words of this statute are almost identical with the words of fourth section, article 2, of the Constitution; its penalties, like those imposed by that instrument, declare, that every officer, convicted under the provisions of that act, shall forfeit his office, and shall there after be forever disqualified from holding any office of honor, trust or profit under the United States.

And yet, what Senator, judicially called upon, to act as a judge in the trial of respondent, for a violation of this statute, in a United States court, would hold, that his resignation before the finding of the indictment would be a valid plea in abatement to the jurisdiction of the court? And if the retirement from office can bar the jurisdiction in the one case, why not in the other? If not available in the construction of a statute, how can it be so in the construction of the Constitution?

The Constitution is itself a law; one of higher dignity, I admit, than other laws, but still to be construed by the same rules applicable to the construction of other statutes. Both seek to guard the United States Government against corruption, venality, and wrong. By what rule of judicial interpretation are similar words in the Constitution and in a statute, having the same object and end, both acknowledged guarantees of popular safety, to be differently construed?

It is said that the Constitution imposes removal from office as the sole penalty.

But this assumption is directly contradicted by the express words of the Constitution, which declare, "that judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States."

The penalty of disqualification was, in the minds of the framers of the Constitution, as important as removal. They understood, that a faithless official, impeached and removed from office, might be speed-

ily restored to one of greater importance than that from which he had been degraded; hence, the great sanction of impeachment would become impotent as a barrier for popular safety unless the penalty of disqualification should follow removal. The Constitution must be so construed that every provision should be harmonized; each rendered effective; and that the object and purpose of the instrument shall always become potential.

In the conclusion I have reached, the absolute removal from office, commanded by the fourth section, article 2, of the Constitution, was no repeal of the discretionary power delegated by the second section of article 1 to the Senate, to impose, within their discretion, the additional penalty of disqualification from office. Therefore, although the guilty official had resigned his office before impeachment, if convicted, the court would still have power to render judgment of perpetual disqualification, if in their discretion, the public good demanded it. And this construction is plainly supported by the provision of the Constitution, withdrawing impeachments from the pardoning power of the President. Those sagacious men would scarcely have taken the power of pardon from the President in impeachments if they had intended the guilty official could escape trial by his own voluntary act. The intent of the Constitution in this provision is manifest. Suppose the respondent should be acquitted by this court for want of jurisdiction. He is then tried by the criminal court and convicted. He is pardoned by the President and becomes forthwith eligible to office, although two-thirds of the Senate were satisfied of his guilt, and would have voted for his conviction, had they concurred in the question of jurisdiction. No stronger illustration can be afforded of the importance of the penalty of disqualification as a guarantee of popular safety.

But if removal from office be the sole penalty, I cannot yield my assent to the legal postulate that the inability of a court to enforce its judgment can affect its jurisdiction. The infirmity of any defendant to receive the judgment caused by his own act, can never divest the power of the court to render it. And this, I had supposed, was settled by direct authority. In the case of Rhode Island *vs.* Massachusetts, where the bill in equity was filed in the Supreme Court of the United States, the plea was interposed, that the court could not enforce its sentence. After full argument the court maintained its jurisdiction. (12 Peters, page 657.) Again in Kentucky *vs.* Denison, the Supreme Court of the United States held, in an elaborate opinion, that it had original jurisdiction to issue the mandamus; yet, as it had no power to enforce the rule against the governor of a sovereign State, the motion was overruled. (24 Howard, page 66.)

Merryman, a citizen of Maryland, was at the beginning of the war confined illegally by military authority. He applied to Chief Justice Taney for a writ of *habeas corpus*. The writ issued, and that eminent jurist held, that the applicant was entitled to his liberty; but as the law was borne down by the military, and Judge Taney could not enforce the judgment of the court, he discharged the writ in an opinion of great clearness and power. (Taney's Decisions, page 246.) These authorities might be multiplied. That construction which denies, that civil officers of the United States, who have, while in office, committed crime, are not liable to impeachment, because of their voluntary retirement from office after the commission of the crime but before the institution of the impeachment procedure, is unwarranted by the spirit, letter, and object of the Constitution.

Official responsibility, and official fidelity, are exacted and required by the organic law. Every civil officer of the United States when he enters upon the discharge of an official trust, assumes duties and responsibilities to the people, civil and criminal, from which the Constitution never releases him, until all are fully performed and he has subjected himself to every requirement of the law. Impeachment is an incident of every civil office. Neither civil nor criminal responsibility can be thrown off by any voluntary act of a guilty official.

A different construction would fritter away impeachment. It would cease to be longer a safeguard against usurpation, corruption, or venality, except at the option of the guilty party. While the Constitution has declared that the President shall not pardon an impeached and convicted official who usurps power, barters offices, betrays his trusts, accepts bribes, debauches and demoralizes all within his official sphere, yet this construction of the Constitution which we are urged to adopt, allows such criminal by his own voluntary act to escape the penalties of impeachment, even though his resignation be withheld until an hour before the conviction; because, if as argued, his being out of office divests the jurisdiction of the court, then that effect must follow every resignation tendered before a final disposition of the impeachment. Such a construction is forbidden by the usage of all impeachment trials in England, or in the United States.

The impeachment of Warren Hastings took place in May, 1786, although he had been recalled from India, and resigned in June, 1785. Lord Chancellor Macclesfield, who was compelled to resign his office, was subsequently impeached. A still more signal illustration is found in the case of Lord Melville, in 1806. He was impeached for offenses committed twenty-two years before, long after his resignation. He had held other offices since his first appointment, but held no office when he was impeached.

William Blount, a Senator from Tennessee, was impeached in 1797 for official misdemeanor. The Senate expelled and subsequently impeached him. He pleaded the fact, that he was not a civil officer, when the impeachment was found. The case went off upon the point, that a Senator of the United States was not a civil officer; but one of the managers, and two of Blount's counsel admitted, as I will hereafter show, that a voluntary resignation could be no valid plea for acquittal. With the knowledge of the trial of Macclesfield and of Bacon and of Hastings—the latter trial being alluded to by Colonel Mason in the convention—can it be doubted that the framers of the Constitution would have expressly provided in the Constitution "to be impeached while in office," had that been their intention? And this intent is the more strongly fortified by the fact, that eight or nine of the original thirteen States, that had adopted constitutions prior to the formation of the Federal Constitution had incorporated impeachment into them, and limited it to officials both in and out of office. Virginia and Delaware are signal instances of such provisions.

The constitution of Virginia, adopted July 5, 1776, provides:

> The governor when he is out of office, and others offending against the State, either by maladministration, corruption, or other means by which the safety of the State may be endangered, shall be impeachable by the house of delegates.
>
> * * * * * * *
>
> If found guilty, he or they shall be either forever disabled to hold any office under government, or be removed from such office *pro tempore*, or subjected to such pains or penalties as the law shall direct. (American Constitutions, pages 287, 288.)

The constitution of Delaware, adopted September 20, 1776, provides:

> The president, when he is out of office and within eighteen months after, and all others offending against the State, either by maladministration, corruption, or other means by which the safety of the Commonwealth may be endangered, within eighteen months after the offense committed, shall be impeachable by the house of assembly before the legislative council. * * * If found guilty, he or they shall be either forever disabled to hold any office under the government, or removed from office *pro tempore*, or subjected to such pains and penalties as the law shall direct. And all officers shall be removed on conviction of misbehavior at common law, or on impeachment, or upon the address of the General Assembly. (Article 23, page 213.)

Some of the distinguished men who were prominent members of the conventions which framed the State constitutions were subsequently prominent in the convention which framed the Federal Constitution. Had they intended to limit impeachment trials only to official tenure they would have done so, as I am persuaded, in terms as clear and express as those contained in the State constitutions.

The construction insisted upon is also opposed by all the contemporaneous history of the adoption and ratification of the Constitution of the United States, as well as by other leading statesmen.

Mr. Madison, often called the father of the Constitution, during the debate in the Virginia State convention called to ratify the Federal Constitution, said:

> He (the President) is responsible in person. If he shall seduce a part of the Senate to a participation in his crimes, those who are not seduced would pronounce sentence against him; and there is this supplementary security, that he may be convicted and punished afterward when other members come into the Senate, one-third being included every two years.—*Elliot's Debates*, volume 3, page 316.

Mr. Wilson, also a member of the convention which framed the Constitution of the United States, during the debate in the Pennsylvania State convention called to ratify the Constitution, in speaking of the probable impeachment of a United States Senator, said:

> When a member of the Senate shall behave criminally, the criminality shall not expire with the office. The Senators may be called to account after they shall be changed, and the body to which they belonged shall have been altered.—*Elliot's Debates*, volume 3, page 447.

In the Federal Constitution, upon the 20th of July, 1787, while the clause relative to the impeachment of the President was under discussion and pending a motion to strike out the clause—

> To be removable on impeachment and conviction for malpractice or neglect of duty—

Mr. Pinckney said:

> He ought not to be impeached while in office.
>
> Mr. DARCE. If he be not impeachable while in office, he will spare no means or efforts whatever to get himself re-elected. He considered this as an essential security for the good behavior of the Executive.—*Madison Papers*, volume 2, page 1153.

So again at a much later period John Quincy Adams, a statesman of accurate information in everything pertaining to the Constitution, in the House of Representatives, in 1846, said:

> And here I take occasion to say, I differ from gentlemen who have stated that the day of impeachment has passed by the Constitution from the moment the public office expires. I hold no such doctrine. I hold myself, so long as I have the breath of life in my body, amenable to impeachment by this House for anything I did during the time I held public office.
>
> Mr. BAYLY. Is not the judgment in case of impeachment removal from office?
>
> Mr. ADAMS. And disqualification to hold any office of honor, trust, or profit under the United States forever afterward; a punishment much greater, in my opinion, than removal from office. It clings to a man as long as he lives; and if any public officer ever put himself in a position to be tried by impeachment, he would have very little of my good opinion if he did not think disqualification from holding office for life a more severe punishment than mere removal from office. I hold, therefore, that every President of the United States, every Secretary of State, every officer impeachable by the laws of the country is as liable twenty years after his office expires as he is while in office.—*Congressional Globe*, April 13, 1846.

So, too, during Blount's trial in 1798, the managers and counsel, all eminent lawyers and statesmen of the Republic, concur in one opinion that the voluntary resignation of a faithless official was no valid plea to impeachment. I quote their statements on this point. Mr. Bayard said:

> It is also alleged in the plea that the party impeached is not now a Senator. It is enough that he was a Senator at the time the articles were preferred. If the impeachment were regular and maintainable when preferred, I apprehend no subsequent event grounded on the willful act or caused by the delinquency of the party can vitiate or obstruct the proceeding. Otherwise the party, by resignation or the commission of some offense which merited and occasioned his expulsion, might secure his impunity. This is against one of the sagest maxims of the law, which does not allow a man to derive a benefit from his own wrong.

Mr. Dallas, for the defendant, said:

There was room for argument whether an officer could be impeached after he was out of office; not by a voluntary resignation to evade prosecution, but by an adversary expulsion.

Mr. Ingersoll, for the defendant, said:

It is among the less objections of the cause that the defendant is now out of office not by resignation. I certainly shall never contend that an officer may first commit an offense and afterward avoid punishment by resigning his office; but the defendant has been expelled. Can he be removed at one trial and disqualified at another for the same offense?

The construction contended for is contradicted by a recent judicial adjudication in the case of Barnard, impeached in the year 1872 in the State of New York. Barnard had been elected judge and his term had expired. He was re-elected, and during his second term he was impeached for misdemeanors committed during his first. His plea denied that he could be held to answer during his second term for offenses committed in the first. But after full and elaborate argument this plea was overruled by the court of impeachment, composed of the senate and court of appeals of New York, by a vote of 23 to 9, and Barnard was subsequently found guilty.

Against this array of unbroken authority no opposing precedent; no utterances of a prominent statesman have been cited.

The opponents of jurisdiction insist, that if the power to impeach for official misconduct continues after the retirement of the guilty official, then, that every private citizen of the United States is liable to impeachment. But this argument is palpably erroneous. The power of impeachment by the Constitution extends exclusively to official guilt. That instrument expressly prescribes, as already shown, removal from office and disqualification from holding office, as the only penalties for impeachment and conviction. The Senate can inflict no higher penalty. It is purely political. A citizen who has never held an office under the United States can never be guilty of official crime or misdemeanor; consequently, he can never become the subject of impeachment. Upon the other hand, all citizens who hold office and betray their trusts should never cease to be amenable to every penalty and safeguard of the Constitution, whether in or out of office. The necessity for popular security would be, as already suggested, as strongly demanded in the perpetual political ostracism of corrupt and faithless officials from office, beyond the possible favor of a corrupt President to re-appointment, as by removal from office. How useless to remove an impeachable officer, if the President can re-appoint him! So long as the reason which prompted disqualification from office exists, so long should that construction prevail which will not permit that penalty to fail.

I do not share in the danger to individual liberty so vividly portrayed by the opponents of jurisdiction, as likely to flow from a rigid enforcement of this sanction of impeachment. The danger is upon the other side. Individual virtue is a part of the public virtue. It is impossible that political morality and integrity can long signalize any administration of the Government when virtue shall cease to exist among the people. Still less that the aggregate of American free institutions, all the organs of which consist only of men, should be upright, pure, wise, and beneficent, competent to inspire confidence, if the opposite qualities belong to the individuals who constitute those organs, and make up that aggregate.

But seven impeachments have occurred in the first century of the American Republic, including the pending one. Of these Judges Pickering and Humphreys were convicted. They did not appear and made no defense. While Blount, Chase, Peck, and Johnson were acquitted.

The House of Representatives are clothed with the sole power, within their discretion, of instituting all impeachments. If that popular inquest of the people think, the public safety is best subserved, by the simple, voluntary retirement from office of a degraded civil officer, it is their right to accept his resignation and proceed no further. But, whatever the past forbearance of the House of Representatives has been, in permitting officers guilty of impeachable crimes to resign and escape punishment, still, I utterly deny, that the failure to exercise the power shall, in a case in which the House does call it into active exercise, be relied on as an argument against its existence. Let us not handle the Constitution with rude hands. Enforce all its guarantees against corruption and unlicensed power if you would preserve the liberty it was ordained to perpetuate. Impeachment slumbered in England for a hundred years or more, because bills of attainder took its place. But when corruption began to find a hiding-place behind the ermine of faithless judges in England, impeachment became again a potent instrumentality for the preservation of civil liberty.

My opinion is, that the respondent did not by his voluntary resignation of the office of Secretary of War on the 21st of March, 1876, discharge himself from his responsibility to answer any charge of corruption committed by him, in the administration of that office; and that, therefore, the Senate have jurisdiction to proceed with the trial, and the demurrer to the plea should be sustained.

Opinion of Mr. Wadleigh.

Mr. WADLEIGH. I think the evidence proves the defendant's guilt beyond a reasonable doubt. I also think the Senate has jurisdiction, notwithstanding the defendant was out of office when he was impeached.

The only clauses of the Constitution relating to impeachment are the following:

1. The House of Representatives shall * * * have the sole power of impeachment. (Article 1, section 2.)

2. The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present. (Article 1, section 3.)

3. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law. (Article 1, section 3.)

4. The President * * * shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. (Article 2, section 2.)

5. The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. (Article 2, section 4.)

I think the first clause above quoted grants the power of impeachment. It is found among the other grants of power and is couched in the same language.

What impeachment is the Constitution does not say. Like "*jury trial*," "*habeas corpus*," and many other words, it must be construed to mean what it was understood to mean when the Constitution was framed. There is no doubt that it was then understood to mean the accusation of officers or ex-officers for crimes and misdemeanors affecting the administration of public affairs. Upon the ground that impeachment was one of the birthrights of Englishmen, the colonial assembly of Massachusetts had, in 1774, impeached those judges whose ability and servility to the Crown were dangerous to liberty.

In the debates of the constitutional convention reference was made to the trial of Warren Hastings, who had been impeached when out of office. That trial, prosecuted by Burke, Fox, and other friends of the colonies, attracted the attention of the civilized world.

We may reasonably suppose that had the makers of the Constitution intended to radically change the character of impeachment by limiting it to persons *in* office they would have expressed that intention in clear and unmistakable terms. That they did not do. Those who contend for such a construction are compelled to base it on inference and argument only.

It is contended that because the third clause prohibits a greater penalty than removal from and disqualification for office, therefore one not in office and not liable to *removal* cannot be impeached. This position is absurd. It assumes that where a law forbids the infliction of a fine or penalty *beyond* a certain amount, such fine or penalty cannot be *less* than that amount. Such a construction is opposed both to law and to common sense. It seems too plain for argument that where more than two punishments are forbidden one may be inflicted.

The defendant also contends that the fifth clause, above quoted, confers jurisdiction and defines impeachment; that the words "President, Vice-President and other civil officers" therein limits impeachment to those officers while in office, and that they cannot be impeached when out of office because they cannot then be removed. I think these positions unsound.

Said fifth clause is not found among those which grant jurisdiction and power to Congress, but among those which relate to the powers, duties, and tenure of office of the Executive. It contains no apt words for granting power nor limiting jurisdiction, but merely requires the removal of certain officers upon their impeachment and conviction.

In order to sustain his construction of this fifth clause, the defendant takes three positions. Let us review them in their order:

First. That though the general power of impeachment had been clearly granted in the first clause and though the proceeding was well understood and considered essential to the preservation of liberty, yet the fifth clause, merely requiring the removal of certain officers when impeached and convicted, limits impeachment to those officers alone. I cannot believe that the makers of the Constitution, if they meant to degrade that great process by allowing any one to escape it by resignation, would have expressed their intention so indirectly and obscurely. Nor can I consent to a construction so forced and unnatural.

Second. The defendant contends that the words "President, Vice-President and other officers" apply only to those officers while in office. Such a construction is opposed to the practice of legislatures and courts for hundreds of years. Numerous statutes, both in England and this country, for the punishment of officers are couched in the same phraseology as this clause, and have been uniformly held to apply to ex-officials who committed the crimes while in office. Sections 5408 and 5444 of the Revised Statutes are examples in point. I believe that there is no good reason for departing from this just and reasonable rule in this instance.

Third. The defendant contends that because the fifth clause requires *removal*, therefore one not liable to that punishment cannot be impeached. Such a construction is opposed to the uniform rule, which is, that where one of several penalties cannot be inflicted another may be. Suppose larceny punishable either by imprisonment or branding the left hand, or by both, with a provision that the left

hand shall be branded, would the prior loss of his left hand absolve the criminal from *any* punishment? The defendant contends that it would. It seems to me that such a construction would be absurd. A similar case might arise under section 5444 of the Revised Statutes, providing that every officer of the revenue who admits dutiable goods without duty "shall be removed from office and fined," &c. Can such an officer escape prosecution by resigning?

The impossibility of inflicting one punishment required by law, where another may be inflicted, cannot prevent the conviction of the offender. Here the defendant, if convicted, may be disqualified from holding office, and I see no good reason for adopting here a rule of construction before unknown to shield him if he be guilty.

The true meaning of the Constitution upon this question of jurisdiction must be sought for mainly in the instrument itself. There is little light from any other source. It may perhaps be safely said that the question has never been exhaustively or fully considered till this trial commenced.

It is evident from the debates in the constitutional convention that the makers of the Constitution regarded impeachment as a great and necessary restraint upon corruption and the insidious encroachments of executive power. It is not if any officer can escape it by resignation. It then becomes an empty threat. The punishment of disqualification can never be inflicted, and thus one of the chief safeguards of popular governments is shorn of its strength and becomes a mere farce. I think that the construction contended for by the defendant is condemned by the facts of history, by legal precedents, by the language of the Constitution, and by the principles which underlie our Government.

Opinion of Mr. Wright.

Mr. WRIGHT. I dismiss the question of jurisdiction with the single remark that I am, as heretofore, of the clear opinion that defendant is impeachable, notwithstanding his resignation. If, however, I thought otherwise, I should regard the judgment of the Senate as conclusive upon me at this time for the purposes of this case, and the jurisdictional inquiry cannot, in any form or in any degree, in my opinion, therefore, enter as an element into the question of guilt or innocence. If a majority may decide it, and I have no doubt upon the point, then that decision is just as binding as if two-thirds had so determined, and it is no longer a legal or competent factor in the case. Defendant's guilt or innocence upon the facts does not, in any legal or just sense, depend upon this question of jurisdiction.

But without more on this point, which, by reason of my views on the question of jurisdiction, it will be readily seen is quite unnecessary I come at once to the ultimate inquiry, Is the defendant guilty as charged?

I shall not consider the articles *seriatim*, but look at them as a whole. These, it is admitted, charge *bribery* as defined by the statute or they charge nothing. It is for this offense a conviction is claimed and for nothing other or different. This narrows the scope of inquiry very much indeed, and I have nothing to do but to state the law and apply the facts as I understand them to this one specific charge or offense.

Section 5451 of the Revised Statutes defines the offense of the corrupter or the party offering the bribe. This I pass as of but little value in our present inquiry, with the remark that the person offering or giving the bribe must have done so with the *intent* that it should *influence* the action or decision of the officer to whom given or offered, but that it is not necessary that the officer should have been influenced or his action in the least affected favorably to the plans or schemes of the corrupter. Indeed the rule is that though the officer does not perform his promise, and, too, though he should directly violate it, and do in every respect different from what was exacted or expected, the offense is still complete if the intent is shown, so far as the person giving the bribe is concerned. This is the rule of the common law and is in no manner changed by the statute. (Sutsten *vs.* Norton, 3 Burrows, page 1235; Harding *vs.* Stokes, 2 Meeson & Welsby, page 233.; Henslow *vs.* Fawcett, 3 Adophus & Ellis, page 51. Many other authorities might be cited, but these are sufficient.) Whether the acceptance of the offer in terms would make both parties guilty is a further inquiry of which more *arguendo* hereafter.

Section 5501, Revised Statutes, defines the *acceptance* of a bribe by *an officer*, and is, in substance, that every officer of the United States "who asks, accepts, or receives any money, or any contract, promise, undertaking, obligation, guarantee, or security for the payment of money, or for the delivery or conveyance of anything of value, *with intent to have his decision or action on any question*, matter, cause, or proceeding * * * *influenced thereby*, shall be punished," &c.

That defendant was an officer within the meaning of this statute is not denied. That he received, or that there passed through his hands, a large sum of money furnished or paid by Marsh is abundantly established. That Marsh made a corrupt contract with Evans, received its fruits, and sent what was known to *him* as one-half thereof regularly to the respondent is scarcely to be denied. That defendant knew whence it came, that is, of what it was the fruit, rests alone upon inference, and there is, in respect to this part of the case, good room for at least reasonable doubt. Of this, however, somewhat more hereafter.

But I anticipate. The pivotal inquiry, as it occurs to me, is, was the money received by defendant *with intent* that his action or decision on any question, matter, cause, or proceeding should be influenced thereby? All other inquiries converge to this, and all the testimony is of value or otherwise as it does or does not assist in its solution. The charge is sustained, if at all, by the testimony of Marsh and Evans, and indeed, their testimony out of the case, ther is nothing left of it. And here let it be remembered, that it matters little whether this testimony is impaired by reason of its untruthfulness, or its incompleteness, or unsatisfactory character, the prosecution, in either case, would be without anything upon which to stand or rest their case. That is to say, it will not do to assume that these were unwilling witnesses, that they did not tell all they knew or the whole truth, and that therefore the triers must guess out the balance and make a case for the Government. My duty is, looking at the whole testimony just as it was delivered, looking at all the circumstances and not at what might have been proven or by guessing at what is possibly or even probably the true state of the case, to say whether I believe beyond a *reasonable doubt* that this man is guilty as charged; whether he received this money with *intent* to have his action or decision influenced thereby.

And looking at this question, so pivotal, as I have already stated, coming to it squarely and disconnected with everything else, I feel bound to say that the testimony in its support is fatally deficient.

There is no testimony whatever that there was any contract express or implied with the accused before Evans was appointed or at the time the promise of appointment was made to Marsh. Nor is there any that subsequent thereto any act or decision of the Secretary was influenced by the giving or receiving of this money, nor that he received it with the intent to be thus influenced. It may have been ever so immoral and reprehensible for one in the position of the respondent to take this money, but that is not the question. With this I have nothing now to do. Was it legal bribery? for it is with this we have to do. Marsh and Evans both most emphatically deny, so far as they are aware, any guilty knowledge, or purpose, or intent on the part of the Secretary; and though I might grant that it is more than probable and indeed admit that it is almost if not quite certain that he knew that Evans was paying Marsh money and knew of their arrangement or contract, what would that avail in the absence of evidence to satisfy me that he received the money with *intent* that his action should be influenced by it? It matters not, let it be borne in mind, what Marsh's motive may have been so long as it was unknown to respondent or so long as he was not influenced by these payments or remittances, or rather in the absence of affirmative and satisfactory evidence that there was the intent to be influenced in his official action by the same.

If it be said that a public officer should not be allowed to receive gifts, presents, or the like from any one, much less from any one then or afterward appointed to place by him, that it is contrary to public morals and the best interests of the service—I say if this be said, I only reply, grant it, as I do, and still nothing is gained; for this under the statute is not an offense, and for no such official misconduct or moral misdemeanor is a conviction here claimed; for, I repeat, the claim is, as charged in the articles, that there was bribery, bribery according to the statute, or there was nothing; and this is what I have to consider, and not some other matter or act, though ever so much in conflict with good morals or ever so detrimental to the public service. I need hardly suggest that in this case I am not to *make* the law, but *declare* it. If it does not go far enough and should include another class of delinquents not now within its terms, let it be amended; but I cannot enlarge it so as to make legal guilt where none exists as the law now stands.

I shall not examine the testimony in detail. This would serve no useful purpose, nor would the time allowed me under the rules permit. I have contented myself with stating conclusions or the impression made upon me by the testimony touching the one cardinal inquiry, and beyond this I cannot and need not go.

Now, I am not prepared to affirm that if respondent *knew* that Marsh paid him this money with intent to influence his action or decision in any matter, general or special, touching this appointment or this post-tradership, and accepted it with this knowledge, this would not be bribery on the part of the officer as well as the briber, though there was no other or affirmative evidence of the required guilty intent. And this, too, though he was in no manner influenced from the straight path of official rectitude thereby. But that is not this case. For the only testimony that such was the corrupter's purpose or that accused knew thereof, is from Marsh himself and he most emphatically negatives any intent or knowledge. It may be that he swears falsely, but this cannot make the least difference; for, as I cannot know what he would say if he spoke the truth, I cannot, assuming the falsehood of his testimony, predicate a state of things upon some hypothetical true statement, upon which to find guilt. He might, if he spoke the whole truth—assuming that he has not now—make a state of case as fully exculpating as it is now short of inculpating the accused. Certainly, by every rule of evidence known to the books and governing such inquiries, it is my duty to presume that such withheld statement would tend to show innocence rather than guilt.

For these reasons, I am bound to conclude that defendant is not guilty as charged; and as to anything else I am not now called upon to inquire.